DOCKET

SUPREME COURT
OF THE UNITED STATES

No. 10-76
Title: Goodyear Dunlop Tires Operations, S.A., et al., Petitioners
v.
Edgar D. Brown, et ux., Co-Administrators of the Estate of Julian David Brown, et al.
Docketed: July 14, 2010
Lower Ct: Court of Appeals of North Carolina
Case Nos.: (COA08-944)
Decision Date: August 18, 2009
Discretionary Court Decision Date: April 14, 2010
Questions Presented

---Date---	--------Proceedings and Orders----------
Jul 13 2010	Petition for a writ of certiorari filed. (Response due August 13, 2010)
Aug 5 2010	Order extending time to file response to petition to and including September 13, 2010.
Aug 13 2010	Brief amicus curiae of Chamber of Commerce of the United States of America filed.
Aug 27 2010	Brief of respondents Edgar D. Brown, and Pamela Brown, Co-Administrators of the Estate of Julian David Brown, et al. in opposition filed.
Sep 8 2010	DISTRIBUTED for Conference of September 27, 2010.
Sep 8 2010	Reply of petitioners Goodyear Luxembourg Tires, S.A., et al. filed. (Distributed)
Sep 28 2010	Petition GRANTED. The case is to be argued in tandem with No. 09-1343, J. McIntyre Machinery v. Nicastro.
Nov 5 2010	Consent to the filing of amicus curiae briefs, in support of either party or of neither party, received from counsel for petitioners.
Nov 5 2010	Consent to the filing of amicus curiae briefs, in support of either party or neither party, received from counsel for the respondents.
Nov 8 2010	SET FOR ARGUMENT ON Tuesday, January 11, 2011.
Nov 12 2010	Brief of petitioners Goodyear Luxembourg Tires, SA, et al. filed.
Nov 12 2010	Joint appendix filed. (Statement of costs filed)
Nov 18 2010	Brief amicus curiae of Product Liability Advisory Council, Inc. filed.
Nov 19 2010	Brief amicus curiae of the United States filed.
Nov 19 2010	CIRCULATED.
Nov 19 2010	Brief amici curiae of Organization for International Investment and Association of International Automobile Manufacturers Inc. filed. (Distributed)
Nov 19 2010	Brief amicus curiae of Chamber of Commerce of the United States of America filed. (Distributed)
Nov 19 2010	Brief amicus curiae of Washington Legal Foundation filed. (Distributed)
Dec 9 2010	Motion of the Acting Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
Dec 13 2010	Brief of respondents Edgar D. Brown, et ux., Co-Administrators of the Estate of Julian David Brown, et al. filed. (Distributed)
Dec 14 2010	Record received fromCourt of Appeals of North Carolina (1 envelope).
Jan 4 2011	Reply of petitioners Goodyear Dunlop Tires Operations, SA, et al. filed. (Distributed)
Jan 7 2011	Motion of the Acting Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
Jan 11 2011	Argued. For petitioners: Meir Feder, New York, N. Y., and Benjamin J. Horwich, Assistant to the Solicitor General, Department of Justice, Washington, D. C. (for United States, as amicus curiae.) For respondents: Collyn Peddie,

Houston, Tex
Jan 13 2011 Record received from Supreme Court of North Carolina (1 envelope)

PETITION FOR WRIT OF CERTIORARI

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Supreme Court, U.S.
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10-76 JUL 13 2010

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No. 10-

IN THE

Supreme Court of the United States

GOODYEAR LUXEMBOURG TIRES, SA,
GOODYEAR LASTIKLERI T.A.S., AND
GOODYEAR DUNLOP TIRES FRANCE, SA,
Petitioners,

v.

EDGAR D. BROWN AND PAMELA BROWN, CO-ADMINISTRATORS OF THE ESTATE OF JULIAN DAVID BROWN, AND KAREN M. HELMS, ADMINISTRATRIX OF THE ESTATE OF MATTHEW M. HELMS,
Respondents.

On Petition for a Writ of Certiorari to the North Carolina Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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JULY 13, 2010

QUESTION PRESENTED

Whether a foreign corporation is subject to general personal jurisdiction, on causes of action not arising out of or related to any contacts between it and the forum state, merely because other entities distribute in the forum state products placed in the stream of commerce by the defendant.

PARTIES TO THE PROCEEDING

The parties to the proceeding below were Petitioners-Defendants Goodyear Luxembourg Tires, SA, Goodyear Lastikleri T.A.S., and Goodyear Dunlop Tires France, SA; Defendants Eric R. Meter, French Soccer Network, European Soccer Network, North Carolina Youth Soccer Association, Inc., The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires Europe B.V., and Goodyear SA; and Respondents-Plaintiffs Edgar D. Brown and Pamela Brown, as Co-Administrators of the Estate of Julian David Brown, and Karen M. Helms, as Administratrix of the Estate of Matthew M. Helms.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioners disclose as follows:

Petitioners Goodyear Luxembourg Tires, SA, Goodyear Lastikleri T.A.S., and Goodyear Dunlop Tires France, SA, are indirect subsidiaries of The Goodyear Tire & Rubber Company. In addition, Sumitomo Rubber Industries, Ltd. indirectly owns more than 10% of the stock of Goodyear Luxembourg Tires, SA, and Goodyear Dunlop Tires France, SA. No other publicly held company owns 10% or more of the stock of any of these entities.

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The opinion of the North Carolina Court of Appeals (Pet. App. 1a-29a) is reported at 681 S.E.2d 382. The North Carolina Superior Court's opinion (Pet. App. 30a-36a) is unreported. The North Carolina Supreme Court's denial of discretionary review (Pet. App. 37a-38a) is reported at 364 N.C. 128, and is available at 2010 WL 1643255.

JURISDICTION

The North Carolina Court of Appeals entered its judgment on August 18, 2009. The North Carolina Supreme Court denied discretionary review on April 14, 2010. Jurisdiction in this Court exists under 28 U.S.C. § 1257(a). *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 485 (1975); *Shaffer v. Heitner*, 433 U.S. 186, 195 n.12 (1977).

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1, cl. 2.

INTRODUCTION

This case squarely presents an important and recurring federal constitutional question that is in

need of resolution by this Court whether a foreign corporation becomes subject to general personal jurisdiction in a state's courts, on causes of action not arising out of or related to any contacts between it and the forum state, merely because other entities distribute in the forum state products placed in the "stream of commerce" by the defendant. In this case, claims arising out of a bus accident in France were asserted against French, Luxembourgian, and Turkish corporations in North Carolina state court. Citing North Carolina's "interest in providing a forum" for North Carolina plaintiffs, the court below erroneously held contrary to the precedents of the multiple federal courts of appeals and state supreme courts that have addressed the issue that mere placement in the stream of commerce of products ultimately distributed by others in North Carolina was sufficient to support general jurisdiction in North Carolina over any and all claims against these foreign defendants.

Unlike "specific jurisdiction" which applies only in suits "arising out of or related to the defendant's contacts with the forum" "general jurisdiction," where applicable, permits a defendant to be haled into court in the state on any claim whatsoever. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-15 nn.8-9 (1984). Because general jurisdiction gives a state unlimited authority to adjudicate claims against a defendant, it applies only when the defendant's activities in a state are "so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945). Under these principles, the Third, Fifth, and Seventh

Circuits and the highest courts of Alabama, Kansas, and Texas have uniformly held that a defendant's mere placement of products into the stream of commerce cannot support an assertion of general jurisdiction over that defendant, by a state in which those products are ultimately distributed, on claims unrelated to the products distributed in the state. The decision below irreconcilably conflicts with these holdings, and therefore merits this Court's review.

This Court's review is also necessary because the North Carolina Court of Appeals' decision cannot be squared with this Court's precedents. The decision obliterates the narrow limits this Court has placed on general jurisdiction in cases like *International Shoe*, and it conflicts as well with the basis of this Court's stream of commerce doctrine, which is inherently limited to claims arising out of products distributed in the forum state. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

Finally, this Court's intervention is also required because of the negative practical consequences of the decision below. By threatening to subject corporations whose products are distributed in the "stream of commerce" to unlimited jurisdiction wherever other entities distribute those products, the decision gives rise to vast opportunities for forum-shopping; creates economic disincentives to engaging in interstate and international commerce with the United States; and constitutes precisely the type of over-aggressive assertion of authority over foreign entities that, as this Court has previously recognized, jeopardizes important international relations interests of the United States.

STATEMENT

This case arises out of an April 18, 2004 bus accident in France that took the lives of two North Carolina residents who were traveling in Europe. The decedents' estates ("Respondents") filed suit in North Carolina state court against multiple defendants, including Petitioners Goodyear Luxembourg Tires SA ("Goodyear Luxembourg"), Goodyear Lastikleri T.A.S. ("Goodyear Turkey"), and Goodyear Dunlop Tires France SA ("Goodyear France"), and their corporate affiliate, The Goodyear Tire & Rubber Company.[1] The suit seeks damages from Petitioners on theories arising from the design, manufacture, testing, and sale of an allegedly defective tire on the bus in question.

Petitioners are tire manufacturers incorporated in Luxembourg, Turkey, and France, respectively. They make and sell tires primarily for sale in European and Asian markets, which differ substantially from the American tire market, and there is very limited use for their products in the United States. Donn P. Kramer Dep. Tr. at 9-10. The record reflects that approximately 45,000 of Petitioners' tires were distributed in North Carolina in the years 2004-2007, Pet. App. 26a, as compared with Petitioners' total manufacturing capacity in that period according to the Global Tire Report of more than 90 million tires.[2] Petitioners have no presence in North

[1] Respondents also alleged and then voluntarily dismissed claims against additional Goodyear subsidiaries. The remaining defendants did not contest personal jurisdiction and are not before this Court.

[2] The Global Tire Report is published semi-annually in three Crain Communications publications Tire Business, Rubber &

Carolina and took no affirmative action to cause their tires to be marketed in North Carolina. Pet. App. 22a. To the limited extent that Petitioners' tires reached North Carolina, "other entities were responsible for" that distribution. *Id.* The type of tire at issue in the accident was never distributed in North Carolina. Kramer Dep. Tr. at 17, 20.

Petitioners moved to dismiss the complaint in this case, arguing that asserting personal jurisdiction over them violated the Due Process Clause, in that they lacked any presence in North Carolina and the allegedly defective tire was manufactured in Turkey, sold and used in France, and involved in an accident in France.[3] The trial court denied the motion, emphasizing that other tires manufactured by Petitioners were distributed in North Carolina by other Goodyear corporations; that accordingly Petitioners "knew or should have known that some of th[eir] tires were distributed for sale to North Carolina residents"; and that "North Carolina has a substantial interest in allowing its citizens a forum for the redress of grievances." Pet. App. 33a, 35a. In view of these facts, the court held, Petitioners "have continuous and systematic contacts with North Carolina and are conducting substantial activity

Plastic News and European Rubber Journal. Its figures for the individual Petitioners for the period in question add up to approximately 56.1 million tires for Goodyear France, 30.5 million for Goodyear Turkey, and 7 million for Goodyear Luxembourg.

[3] North Carolina's long-arm statute, like those of a majority of the states, confers personal jurisdiction to the full extent permitted by due process. Pet. App. 10a.

within North Carolina," such that they "could reasonably anticipate being haled into court in North Carolina" even on a claim arising elsewhere. Pet. App. 34a.

On appeal to the North Carolina Court of Appeals, Petitioners argued that they could not constitutionally be subjected to general personal jurisdiction in North Carolina based on their mere placement of goods into the stream of commerce and the ultimate sale by others of some of those goods in North Carolina on a claim not arising from those contacts. Petitioners explained, citing federal authority, that "the stream of commerce theory, which is based on notions of specific jurisdiction, may not provide grounds for personal jurisdiction when the product at issue in the litigation is not the product that entered the forum jurisdiction through the stream of commerce."

The Court of Appeals affirmed. The court acknowledged that "this case involves general rather than specific jurisdiction," because "[t]he present dispute is not related to, nor did it arise from, Defendants' contacts with North Carolina," Pet. App. 12a-13a, and further recognized that there was no "evidence that [Petitioners] took any affirmative action to cause tires which they had manufactured to be shipped into North Carolina." *Id.* at 22a. Petitioners, rather, had placed their products in the stream of commerce by providing them to separate (if affiliated) corporate entities, and those "other entities were responsible for the shipment of tires manufactured by [Petitioners] to the United States and, as a part of that process, the tires arrived in North Carolina." *Id.*

The Court of Appeals nonetheless upheld the exercise of general personal jurisdiction over Petitioners, holding that the key "question . . . is whether [Petitioners] have purposefully injected their products into the stream of commerce without any indication that they desired to limit the area of distribution of their product so as to exclude North Carolina." *Id.* at 20a (internal quotation marks and alterations omitted). Here, Petitioners "knew or should have known that a Goodyear affiliate obtained tires manufactured by [Petitioners] and sold them in the United States in the regular course of business"; "several thousand tires manufactured by each of the [Petitioners] eventually found their way into North Carolina markets" in this fashion; and North Carolina had a "well-recognized interest in providing a forum in which its citizens are able to seek redress for injuries that they have sustained." *Id.* at 27a. On this reasoning, the court expressly rejected Petitioners' argument "that 'stream of commerce' analysis simply does not apply in instances involving general, as compared to specific, jurisdiction." *Id.* at 28a. It chose not to address the federal authority cited by Petitioners, observing only that Petitioners "have not cited a North Carolina case" rejecting placement of products in the stream of commerce as a basis for general jurisdiction. *Id.*

Petitioners timely sought discretionary review from the North Carolina Supreme Court, repeating their argument that placement of goods into the stream of commerce could not support general jurisdiction, and citing, *inter alia*, decisions of three federal circuits that have so held. *See* Petition for Discretionary Review at 11. On April 14, 2010, the

North Carolina Supreme Court denied review without opinion.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF MULTIPLE FEDERAL COURTS OF APPEALS AND STATE SUPREME COURTS.

The decision below dramatically departs from the precedents of the other federal and state courts that have considered the question presented. Contrary to the North Carolina Court of Appeals which held that Petitioners' mere injection of products into the stream of commerce sufficed to support general personal jurisdiction over Petitioners in North Carolina on legal claims unrelated to the distribution of those products in North Carolina numerous federal courts of appeals and state supreme courts have uniformly held that a company's injection of products into the stream of commerce cannot establish general jurisdiction.

This Court's cases addressing due process limits on personal jurisdiction draw a distinction between "specific jurisdiction" and "general jurisdiction." "Specific jurisdiction" is the exercise of "jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum," whereas "general jurisdiction" permits jurisdiction over a defendant on any and all claims, even those "not arising out of or related to the defendant's contacts with the forum." *Helicopteros*, 466 U.S. at 414-15 nn.8-9. General jurisdiction over a corporation applies when "the continuous corporate operations within a state" are "so substantial and of such a nature as to justify suit against it on causes of action

arising from dealings entirely distinct from those activities." *Int'l Shoe Co.*, 326 U.S. 310 at 318.

This is a general jurisdiction case, because the "dispute is not related to, nor did it arise from, [Petitioners'] contacts with North Carolina." Pet. App. 12a. The court below held that North Carolina could properly assert general jurisdiction over Petitioners notwithstanding Petitioners' lack of presence in North Carolina and the absence of any "evidence that [Petitioners] took any affirmative action to cause tires which they had manufactured to be shipped into North Carolina," *id.* at 22a because Petitioners "purposefully injected their product into the stream of commerce without any indication that they desired to limit the area of distribution of their product so as to exclude North Carolina." *Id.* at 29a.

This holding squarely conflicts with the uniform decisions of the Third, Fifth, and Seventh Circuits and the highest courts of Alabama, Kansas, and Texas, all of which have held that mere injection of products into the stream of commerce cannot support an assertion of general jurisdiction.

In *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 375-76 (5th Cir. 1987), for example, the Fifth Circuit expressly "disagree[d] with the district court's conclusion that the 'stream of commerce' will support a finding of general jurisdiction," and held that in contrast to specific jurisdiction even the flow of substantial quantities of a defendant's products into the forum state through the stream of commerce cannot establish the type of "general presence in th[e] state" required for an assertion of general jurisdiction. *Id.*; *accord Alpine View Co. v. Atlas Copco AB*, 205 F.3d 208, 216 (5th Cir. 2000) ("We

have specifically rejected a party's reliance on the stream-of-commerce theory to support asserting general jurisdiction over a nonresident defendant.").

Likewise, the Seventh Circuit has held that "the stream of commerce theory . . . provides no basis for exercising general jurisdiction over a nonresident defendant," *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 788 (7th Cir. 2003), explaining that the "stringent" requirements of general jurisdiction "'require[] that the defendant's contacts be of the sort that approximate physical presence.'" *Id.* at 787 & n.16 (quoting *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000)). And the Third Circuit has held that "treat[ing] the stream-of-commerce theory as a source of general jurisdiction" would be "unjustifiabl[e]." *D'Jamoos v. Pilatus Aircraft Ltd.*, 566 F.3d 94, 106 (3d Cir. 2009); *see also Dever v. Hentzen Coatings, Inc.*, 380 F.3d 1070, 1075 (8th Cir. 2004) (rejecting claim "that the district court had the power to exercise general personal jurisdiction over [defendant] because [defendant] placed its products in the stream of commerce.").[4]

[4] Numerous federal district court holdings are to the same effect. *See, e.g., Fisher v. Prof'l Compounding Ctrs. of Am., Inc.*, 318 F. Supp. 2d 1046, 1050 (D. Nev. 2004) ("[T]he stream of commerce theory does not apply to a general jurisdiction analysis."), *aff'd sub nom. Fisher v. Alfa Chems. Italiana*, 258 F. App'x 150 (9th Cir. 2007); *DP Envtl. Servs., Inc. v. Bertlesen*, 834 F. Supp. 162, 166 (M.D.N.C. 1993) ("The stream of commerce theory for asserting personal jurisdiction is inapplicable in a case such as this where the cause of action did not arise from the manufacturer's products in the forum state."); *Eli Lilly & Co. v. Mayne Pharma (USA) Inc.*, 504 F. Supp. 2d 387, 393 & n.8 (S.D. Ind. 2007) ("[T]his 'stream of commerce'

Moroever, the state high courts that have addressed the issue have reached the same conclusion. As the Texas Supreme Court recently explained, "stream-of-commerce analysis 'is relevant only to the exercise of specific jurisdiction; it provides no basis for exercising general jurisdiction over a nonresident defendant.' If sales alone created general jurisdiction, a foreign manufacturer . . . could be sued in Texas for labor practices occurring in Germany even though they had nothing to do with Texas." *Spir Star AG v. Kimich*, 310 S.W.3d 868, 874 (Tex. 2010) (citations omitted) (quoting *Purdue Research*, 338 F.3d at 778); *accord Brown v. Abus Kransysteme GmbH*, 11 So.3d 788, 795 (Ala. 2008) (stream-of-commerce theory "is widely regarded as a basis for asserting *specific* jurisdiction") (emphasis in original); *Merriman v. Crompton Corp.*, 146 P.3d 162, 185 (Kan. 2006) ("The stream of commerce theory does not apply to a general jurisdiction analysis.").

The decision below, which held that North Carolina could permissibly assert general personal jurisdiction over Petitioners based on their mere "inject[ion of] their product into the stream of

theory cannot serve as a basis for an exercise of *general* jurisdiction." (emphasis in original)); *XL Specialty Ins. Co. v. Melexis GmbH*, No. 07-1018 (DRD), 2007 WL 3026683, at *3 n.2 (D.N.J. Oct. 16, 2007) ("The stream of commerce theory has been developed for the purpose of asserting specific jurisdiction over a defendant, not general jurisdiction."); *Simplicity Inc. v. MTS Prods., Inc.*, No. 05-3008, 2006 WL 924993, at *4 n.4 (E.D. Pa. Apr. 6, 2006) ("The stream of commerce theory, however, is relevant only to the exercise of specific jurisdiction; it provides no basis for exercising general jurisdiction over a nonresident defendant.").

commerce," is in direct and irreconcilable conflict with the decisions of the multiple other courts to have addressed the issue. This Court's review is necessary to resolve that conflict.

II. THE DECISION BELOW IS WRONG AND SHOULD BE REVERSED.

This Court's review is also necessary to correct the serious error committed by the lower court. The decision below vastly exceeds the scope of general jurisdiction permitted by this Court's decisions and threatens to subject corporations whose products are distributed in the "stream of commerce" to universal jurisdiction, even over entirely unrelated claims, wherever their products are distributed by other entities.

1. Because general jurisdiction permits a state to assert authority even over claims that have no relationship to the forum, its application is strictly limited. As this Court stated in *International Shoe* in describing this form of jurisdiction, the defendant's connection to the state must be "so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." 326 U.S. at 318. Only certain types of relationships between the defendant and a state typically involving, at a minimum, the defendant's actual presence or its equivalent can give the state legitimate authority over *all* of a defendant's activities, regardless of where they occur. Thus, as Professor Brilmayer has explained, "general jurisdiction depends on the fairness of regulating the activities of *insiders*, regardless of where the activities occur," and accordingly "the paradigm bases for general adjudicative jurisdiction" are "domicile,

place of incorporation, and principal place of business." Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 Tex. L. Rev. 721, 782-83 (1988) (emphasis added).[5]

The only post-*International Shoe* case in which this Court has upheld the exercise of general jurisdiction, *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 438 (1952), is illustrative. In *Perkins*, the defendant was a Philippine mining company whose business was interrupted by the Japanese occupation of the Philippines during World War II. The company relocated its headquarters operations during that occupation including preparation of correspondence, distribution of paychecks, directors' meetings, and purchase of machinery, among other things to Ohio. *Id.* at 447-48. Citing *International Shoe*'s description of general jurisdiction, this Court held that these "continuous and systematic" activities in Ohio were "sufficiently substantial and of such a nature as to permit Ohio" to exercise general jurisdiction. *Id.* at 446-48.

In this Court's only post-*Perkins* general jurisdiction case, *Helicopteros*, the company's chief executive officer had negotiated a contract in Texas, and it had accepted checks drawn on a Texas bank,

[5] Similarly, Professors von Mehren and Trautman, who first coined the phrases "specific jurisdiction" and "general jurisdiction," viewed general jurisdiction as appropriate only in "the common arena of the defendant's activities," which, for a corporation, is the state of "the corporate headquarters—presumably both the place of incorporation and the principal place of business." Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1179 (1966).

purchased products and services from a Texas-based company "for substantial sums," and sent personnel to Texas for training. 466 U.S. at 416. The Court found that these contacts, unlike the "continuous and systematic" contacts at issue in *Perkins*, could not support general jurisdiction. *Id.* Thus, the only post-*International Shoe* case in which this Court has found general jurisdiction proper was one in which the corporation was physically present, and conducted its headquarters operations, in the forum state.

Under the principles of these cases, a state may assert general jurisdiction over a defendant only when the defendant's contacts with the state are "so extensive to be tantamount to [the defendant] being constructively present in the state to such a degree that it would be fundamentally fair to require it to answer in [the state's] court[s] in *any* litigation arising out of *any* transaction or occurrence taking place *anywhere* in the world." *Purdue Research*, 338 F.3d at 787 (emphasis in original); *see also Tamburo v. Dworkin*, 601 F.3d 693, 701 (7th Cir. 2010) ("[T]he contacts must be sufficiently extensive and pervasive to approximate physical presence."); *Bird v. Parsons*, 289 F.3d 865, 873 (6th Cir. 2002) (same); *Bancroft & Masters*, 223 F.3d at 1086 (same).

The decision below obliterates these strict limits on general jurisdiction. Under the rule adopted below, corporations that "purposefully inject[] their product[s] into the stream of commerce," Pet. App. 29a, face the threat of suit on any claim arising anywhere in the world in *every* jurisdiction in which their products are distributed by others. This raises the prospect, for example, that Goodyear

Turkey or any other company whose products are regularly distributed in the stream of commerce may be required to defend itself in court in North Carolina (or in an array of other jurisdictions) over an Istanbul lease dispute, an alleged patent infringement in Shanghai, or an alleged libel published in Nigeria. Such an approach defeats a key purpose of the due process limits on personal jurisdiction, which is to "allow[] potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp.*, 444 U.S. at 297. Due Process does not permit states to assert such untrammeled adjudicatory power.

2. The decision below is also inconsistent with the principles set forth in this Court's stream of commerce cases, the reasoning of which is *necessarily* limited to specific jurisdiction. An essential consideration underlying the stream of commerce approach is the fairness of (and legitimate state interest in) subjecting a defendant to suit in a state in which its product is marketed *when the product so marketed causes injury in that state.* As this Court's classic statement of the stream of commerce approach put it:

> Hence if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if

> its allegedly defective merchandise *has there been the source of injury* to its owner or to others.

World-Wide Volkswagen, 444 U.S. at 297 (emphasis added); *see also, e.g., Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 114 (1987) (state's "legitimate interests" relate to the safety of the product shipped into the state).

This reasoning simply does not apply to the assertion of general jurisdiction, because the key to the reasoning is the occurrence of injury *resulting from the distribution of the defendant's product in the forum state*. Absent that nexus, a corporation's placement of its products in the stream of commerce gives a state ultimately receiving some of those products no legitimate interest in adjudicating all claims against that corporation "in *any* litigation arising out of *any* transaction or occurrence taking place *anywhere* in the world," *Purdue Research*, 338 F.3d at 787 (emphasis in original) nor does it make it fundamentally fair for the state to do so.

In sum, the decision below conflicts with both this Court's general jurisdiction cases and its specific jurisdiction cases. It should be reversed.

III. THE QUESTION PRESENTED IS AN IMPORTANT ONE THAT REQUIRES THIS COURT'S IMMEDIATE ATTENTION.

The importance of the question presented, its growing salience in an ever-more-globalized economy, and the radical expansion of jurisdiction embodied in the decision below, make the need for this Court's review particularly urgent.

As an initial matter, the implications of the decision below go far beyond North Carolina, because well over half the states have long-arm statutes authorizing the exercise of jurisdiction to the full extent permitted by due process. *See, e.g.*, Allyson W. Haynes, *The Short Arm of the Law: Simplifying Personal Jurisdiction over Virtually Present Defendants*, 64 U. Miami L. Rev. 133, 162 n.189 (2009); Jeffrey J. Utermohle, *Maryland's Diminished Long-Arm Jurisdiction in the Wake of* Zavian v. Foudy, 31 U. Balt. L. Rev. 1, 10 & n.68 (2001). Accordingly, the rule adopted below, if accepted, would authorize similarly expansive assertions of personal jurisdiction in all of these states. This is problematic for multiple reasons.

First, the decision below invites rampant forum shopping. As explained above, the decision threatens essentially unlimited jurisdiction over corporations wherever their products are distributed by others even if, as here, the forum state is only one of many states receiving the products. Under this approach, plaintiffs will routinely have a broad array of potential forum states from which to choose in suing such a corporation, without regard to any connection between the forum and the cause of action. A more open invitation to forum shopping would be hard to imagine.

Second, the issue is of tremendous importance to the economy an economy that increasingly involves the shipment of products in the stream of commerce to and from all corners of the world both because of the burden (and deterrent effect) of forcing businesses to defend claims in adverse fora where they have no presence, and because the threat of

being haled into court wherever one's products are shipped will necessarily act as a disincentive to engaging in interstate and international commerce with the United States. As Professor Brilmayer has warned, "predicating jurisdiction on interstate conduct provides disincentives to engage in it," and such disincentives "are particularly problematic in general jurisdiction cases because they affect innocent conduct, not conduct that gives rise to the litigation and that the state may legitimately seek to discourage." Brilmayer, *supra*, 66 Tex. L. Rev. at 743.

Third, the rule adopted below fundamentally undermines the predictability and fairness that are at the core of due process constraints on personal jurisdiction. A key function of such constraints is to "allow[] potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. Yet, under the decision below, a company will not be able to make use of the stream of commerce without thereby potentially subjecting itself to suit, on any cause of action, wherever its products are sold.

Finally, the decision threatens to interfere with important international relations interests of the United States. As Professor Born observed in an article cited by this Court in *Asahi* "exorbitant assertions of judicial jurisdiction [over foreign entities] by United States courts" give rise to a host of international relations problems; "can frustrate diplomatic initiatives by the United States, particularly in the private international law field";

and "[m]ost significantly . . . can interfere with United States efforts to conclude international agreements providing for mutual recognition and enforcement of judgments or restricting exorbitant jurisdictional claims by foreign states." Gary B. Born, *Reflections on Judicial Jurisdiction in International Cases*, 17 Ga. J. Int'l & Comp. L. 1, 29 (1987) (citing failure of United States-initiated negotiations on proposed U.S.-U.K. Convention on the Reciprocal Recognition and Enforcement of Judgments in Civil Matters). To this day, according to the U.S. Department of State, the United States lacks international agreements on reciprocal recognition and enforcement of judgments in significant part because foreign countries have often "objected to the extraterritorial jurisdiction asserted by courts in the United States." U.S. Dep't of State, Enforcement of Judgments.[6]

This Court in *Asahi* recognized the important foreign relations consequences of aggressive assertions of jurisdiction over foreign corporations, emphasizing that United States "foreign relations policies, will be best served by . . . an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State." 480 U.S. at 115. Permitting the assertion of general jurisdiction over foreign defendants based upon their mere placement of products in the stream of commerce goes well beyond even prior "exorbitant assertions of judicial jurisdiction" by United States courts, and directly

[6] *See* http://travel.state.gov/law/judicial/judicial_691.html (last visited July 12, 2010).

threatens the important foreign relations interests recognized by *Asahi*.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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JULY 13, 2010

APPENDIX

APPENDIX A

Court of Appeals of North Carolina.

Edgar D. BROWN and Pamela Brown, Co-Administrators of the Estate of Julian David Brown, and Karen M. Helms, Administratrix of the Estate of Matthew M. Helms, Plaintiffs,

v.

Eric R. METER, French Soccer Network, European Soccer Network, North Carolina Youth Soccer Association, Inc., The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France, SA., Defendants.

No. COA08-944.

Aug. 18, 2009.

Appeal by Defendants from order entered 1 May 2008 by Judge Gary E. Trawick in Onslow County Superior Court. Heard in the Court of Appeals 10 February 2009.

Bell, Davis & Pitt, P.A., by William K. Davis, Charlot F. Wood, and Kevin G. Williams, Winston-Salem, for Defendants-Appellants.

Kirby & Holt, L.L.P., by David F. Kirby and William B. Bystrynski, Raleigh, for Plaintiffs-Appellees.

ERVIN, Judge.

Goodyear Luxembourg Tires SA (Goodyear Luxembourg), Goodyear Lastikleri T.A. (Goodyear Turkey), and Goodyear Dunlop Tires France SA (Goodyear France) (collectively, Defendants) appeal from an order entered 1 May 2008 denying their motions to dismiss for lack of personal jurisdiction and concluding that the "[e]xercise of general jurisdiction over defendants comports with Due Process and does not offend traditional notions of fair play and justice." After a thorough review of the record and the applicable law, we affirm the trial court's order.

Matthew Helms and Julian Brown (Decedents), two thirteen-year-old soccer players who resided in North Carolina, died from injuries suffered in a bus wreck on 18 April 2004 outside Paris, France. Decedents were traveling to Charles de Gaulle Airport in preparation for returning to North Carolina at the time of the accident. According to the amended complaint filed by Edgar D. Brown and Pamela Brown, co-administrators of the estate of Julian Brown, and Karen M. Helms, Administratrix of the estate of Matthew Helms (together, Plaintiffs), on 17 April 2006, one of the bus tires "designed, manufactured and distributed" by Defendants failed when its plies separated. The tire that failed was a Goodyear Regional RHS tire manufactured by Goodyear Turkey, which operates a manufacturing plant located in that country. Plaintiffs sought relief from a series of Goodyear affiliates, including Goodyear France, Goodyear Luxembourg, and Goodyear Turkey on a number of theories arising from an alleged negligent "design, construction, testing, and inspection" of and a failure to warn

about alleged latent defects in the Goodyear Regional tire in question.[1]

On 9 March 2007, Defendants filed motions to dismiss predicated on an alleged lack of personal jurisdiction pursuant to N.C. Gen.Stat. § 1A-1, Rule 12(b)(2).[2] The dismissal motions filed by Defendants and other Goodyear affiliates were supported by affidavits executed by Philippe Degeer, the Director and Vice President Consumer Tires E.U. of Goodyear Dunlop Tires Europe B.V.; Hermann Lange, the Finance Director of Goodyear Luxembourg Tires SA and Goodyear SA; Ersin Özkan, Sales and Marketing Director of Goodyear Lastikleri T.A., and Korhan Ul'un Beyani, Corporate Secretary of Goodyear Lastikleri T.A.; and Olivier Rousseau, General Manager of Goodyear Dunlop Tires France S.A. On 7 June 2007, Plaintiffs filed the affidavit of Robert C. Ochs, P.E., P.C. (Ochs). The trial court heard arguments on Defendants' dismissal motions on 11 June 2007, after which it took Defendants' dismissal motions under advisement. On 28 September 2007, Plaintiffs took the deposition of Donn P. Kramer, Director of Product and Supply Chain Management for Commercial Systems for Goodyear Tire and Rubber Company, pursuant to N.C. Gen.Stat. § 1A-1, Rule 30(b)(6). On 6 December 2007, an affidavit executed by Kramer containing additional information relating to the delivery of tires manufactured by Defendants into North Carolina was filed. A final hearing on

[1] In addition to Goodyear France, Goodyear Luxembourg, and Goodyear Turkey, Plaintiffs initially sought relief from the Goodyear Tire and Rubber Company, Goodyear SA, and Goodyear Dunlop Tires Europe B.V. in the amended complaint.

[2] Dismissal motions were also filed on behalf of Goodyear SA and Goodyear Dunlop Tires Europe B.V.

Defendants' dismissal motion was held at the 10 December 2007 session of the Onslow County Superior Court.[3]

On 1 May 2008, the trial court entered an order denying Defendants' dismissal motions. In denying Defendants' motions, the trial court made the following findings of fact:

> 1. Matthew Helms of Jacksonville and Julian Brown of Charlotte, two 13-year-old youth soccer players, died from injuries suffered in a bus wreck that occurred on April 18, 2004, near Paris, France. Plaintiffs have alleged that as the decedents rode on a bus headed to the airport in Paris to return home to North Carolina, one of the bus' tires, designed, manufactured and distributed by the Goodyear defendants, failed when its plies separated, causing the bus to leave the highway and overturn.
>
> 2. Defendants Goodyear [Luxembourg]; Goodyear [Turkey]; and Goodyear [France] (hereinafter "defendants") moved to dismiss for lack of personal jurisdiction, pursuant to Rule 12(b)(2) of the N.C. Rules of Civil Procedure and N.C.G.S. § 1-75.4.
>
> 3. The subject tire that allegedly failed was a Goodyear Regional tire, which was manufactured by defendant Goodyear [Turkey].
>
> 4. The subject tire contained information that was written entirely in English, including warnings and directions, U.S. Department of Transportation markings placed on the tire to

[3] Plaintiffs voluntarily dismissed their claims against Goodyear SA and Goodyear Dunlop Tires Europe B.V. on 12 December 2007.

allow it to be sold in the United States, and markings to show it was manufactured as qualified for sale in the United States.

5. The subject Goodyear Regional tire has a U.S. code listing load and pressure ratings that conform to United States standards set by the Tire and Rim Association, the standardizing organization for the tire industry in the United States. The tire also contains a "Safety Warning," written in English, which conforms to the warnings found on all tires for sale in the United States.

6. During the period from 2004 through a portion of 2007, at least 5906 tires made by Goodyear [Turkey] were shipped into North Carolina for sale, although not by the original manufacturer.

7. During the period from 2004 through a portion of 2007, at least 33,923 tires made by Goodyear [France] were shipped into North Carolina for sale, although not by the original manufacturer.

8. During the period from 2004 through a portion of 2007, at least 6402 tires made by Goodyear [Luxembourg] were shipped into North Carolina .for sale, although not by the original manufacturer.

9. The number of tires shipped into North Carolina from each of these manufacturers may actually be substantially higher, in that The Goodyear Tire and Rubber Company (hereinafter "Goodyear"), after being noticed for a 30(b)(6) deposition, failed to determine how many vehicles equipped with tires from these foreign defendant

manufacturers are imported into the U.S. and shipped into North Carolina for sale each year.

10. The defendants, on a continuous and systematic basis, caused tires to be sent into the United States for sale, and knew or should have known that some of those tires were distributed for sale to North Carolina residents, and the defendants continue to send tires for sale into the United States and know or should know that some of those tires continue to be sold to North Carolina residents on a continuous and systematic basis.

11. The sale of these tires generates substantial revenue for Goodyear, these defendant companies and its related companies.

12. The defendants, as manufacturers, did not have their own distribution system for the sale of their tires, but instead used their Goodyear parent and affiliated companies to distribute the tires they manufactured to the United States and North Carolina.[4]

13. The defendants knew or should have known that tires they manufactured were shipped to the United States through their Goodyear

[4] According to Kramer, the ties between the Goodyear Tire and Rubber Company and Goodyear France, Goodyear Luxembourg, and Goodyear Turkey, respectively were "indirect[.]" For example, Goodyear has "sales marketing offices that develop business plans, sales plans" and determine how the needs associated with those plans would be met. Goodyear's sales marketing office would decide how to obtain the needed product, including whether any needed product would be obtained from a European affiliate. After making this determination, the needed tires would be manufactured, shipped to the United States, and distributed to retailers and similar entities using Goodyear's existing distribution system.

parent and affiliated companies and sold in North Carolina on a continuous and systematic basis.

14. The defendants purposefully and deliberately availed themselves of the North Carolina market for tires and substantially profited from sales of their tires in North Carolina.

15. The defendant companies have continuous and systematic contacts with North Carolina and are conducting substantial activity within North Carolina.

16. Defendant Goodyear [Turkey] is a wholly owned subsidiary of defendant, [t]he Goodyear Tire and Rubber Company, which is based in the United States. All three of the foreign defendant companies are subsidiaries of Goodyear in the United States and as such have additional, abundant ties to the United States.

17. The defendant companies have deliberately attempted to take advantage of the tire market in North Carolina by designing, manufacturing and causing tires to be distributed for sale to the North Carolina market, and those tires are sold in North Carolina.

18. Because all three companies have manufactured tires shipped into North Carolina for sale that by clear implication and inference are used on thousands of vehicles throughout North Carolina, they could reasonably anticipate being haled into court in North Carolina.

19. The quantity of the defendants' contacts with North Carolina, which includes sales of between 5,900 and 34,000 tires within the state, generating substantial revenues and substantial

commercial activity in North Carolina, weighs in favor of a finding of general jurisdiction over the defendants.

20. The quality of those contacts, which include systematic and repeated contacts with the state of North Carolina for the purpose of commerce, along with the defendants' ownership by U.S. corporations doing substantial business in North Carolina, weighs in favor of a finding of general jurisdiction over the defendants.

21. The cause of action in this case is closely related to the contacts with the defendants, in that the defendants are causing substantial quantities of tires they manufactured to be sold in North Carolina, and plaintiffs seek to exercise jurisdiction related to a defect in a tire designed, manufactured, distributed or sold by the defendants.

22. North Carolina has a substantial interest in allowing its citizens a forum for the redress of grievances, especially where two of its citizens have been killed, allegedly by the negligence of the defendants.

23. The foreign Goodyear defendants are not inconvenienced by the trial of this action in North Carolina, in that they do substantial and continuous business in North Carolina, they are subsidiaries of a United States corporation that does substantial and continuous business in North Carolina, and they are represented by the same attorneys as are representing their U.S. parent corporation.

24. The plaintiffs, parents of the deceased boys, would be substantially inconvenienced by litigating this case in foreign countries.

Based on the foregoing findings of fact, the trial court concluded as a matter of law that:

> 1. The defendants have continuous and systematic ties with the State of North Carolina.
>
> 2. The defendants' activities in North Carolina are substantial.
>
> 3. The quantity of the defendants' contacts with North Carolina; the nature and quality of those contacts; the source and connection of the cause of action to the contacts; the interest of North Carolina in this cause of action and the convenience of the parties, all weigh in favor of the exercise of general jurisdiction over the defendants.
>
> 4. Exercise of general jurisdiction over the defendants comports with Due Process and does not offend traditional notions of fair play and justice.

Based on these findings and conclusions, the trial court denied Defendants' dismissal motions. Defendants have noted an appeal to this Court from the trial court's ruling.

On appeal, Defendants contend that the trial court erred in denying their motion for lack of personal jurisdiction. We disagree.

When evaluating personal jurisdiction, the trial court must engage in a two-step inquiry: first, the trial court must determine whether a basis for jurisdiction exists under the North Carolina "long-arm statute," N.C. Gen.Stat. § 1-75.4 (2007), and second, if so, the trial court must determine whether the assertion of personal jurisdiction over the defendant is consistent with applicable due process

standards. *Cameron-Brown Co. v. Daves*, 83 N.C.App. 281, 283, 350 S.E.2d 111, 113 (1986). "When personal jurisdiction is alleged to exist pursuant to the long-arm statute, the question of statutory authority collapses into one inquiry[,]" which is whether defendant has the "minimum contacts necessary to meet the requirements of due process." *Filmar Racing, Inc. v. Stewart*, 141 N.C.App. 668, 671, 541 S.E.2d 733, 736 (2001). Specifically, this Court has held that, "when evaluating the existence of personal jurisdiction pursuant to G.S. § 1-75.4(1)(d)," "the question of statutory authorization 'collapses into the question of whether [the defendant] has the minimum contacts with North Carolina necessary to meet the requirements of due process.'" *Bruggeman v. Meditrust Acquisition Co.*, 138 N.C.App. 612, 617, 532 S.E.2d 215, 218, *disc. review denied and appeal dismissed*, 353 N.C. 261, 546 S.E.2d 90 (2000) (quoting *Hanes Companies v. Ronson*, 712 F.Supp. 1223, 1226 (M.D.N.C.1988)).

In examining the legal sufficiency of the trial court's order, our review on appeal focuses initially on "whether the findings are supported by competent evidence in the record[.]" *Better Bus. Forms, Inc. v. Davis*, 120 N.C.App. 498, 500, 462 S.E.2d 832, 833 (1995). "If the findings of fact are supported by competent evidence, we conduct a *de novo* review of the trial court's conclusions of law and determine whether, given the facts found by the trial court, the exercise of personal jurisdiction would violate defendant's due process rights." *Deer Corp. v. Carter*, 177 N.C.App. 314, 322-23, 629 S.E.2d 159, 166 (2006) (citing *Banc of Am. Secs. LLC v. Evergreen Int'l Aviation, Inc.*, 169 N.C.App. 690, 694-95, 611 S.E.2d 179, 183 (2005) (stating that "it is this

Court's task to review the record to determine whether it contains any evidence that would support the trial judge's conclusion that the North Carolina courts may exercise jurisdiction over defendants without violating defendant's due process rights")). Except as discussed in detail below, Defendants do not dispute that the majority of the trial court's findings of fact are supported by adequate evidentiary support; therefore, we will base the factual component of our analysis on the undisputed information contained in the trial court's order.

According to N.C. Gen.Stat. § 1-75.4(1)(d), "[a] court of this State . . . has jurisdiction over a person" "[i]n any action, whether the claim arises within or without this State, in which a claim is asserted against a party" who "[i]s engaged in substantial activity within this State, whether such activity is wholly interstate, intrastate, or otherwise." *Id.* N.C. Gen.Stat. § 1-75.4(1)(d) was "intended to make available to the North Carolina courts the full jurisdictional powers permissible under federal due process." *Dillon v. Numismatic Funding Corp.*, 291 N.C. 674, 676, 231 S.E.2d 629, 630 (1977). "[B]y its plain language the statute requires some sort of 'activity' to be conducted by the defendant within this state." *Skinner v. Preferred Credit*, 361 N.C. 114, 119, 638 S.E.2d 203, 208 (2006), *rehearing denied*, 361 N.C. 371, 643 S.E.2d 591 (2007).

Similarly, "[d]ue process [considerations] prohibit[ ] our state courts from exercising [personal] jurisdiction unless the defendant has had certain 'minimum contacts' with the forum state such that 'traditional notions of fair play and substantial justice' are not offended by maintenance of the suit." *Cameron-Brown*, 83 N.C.App. at 284, 350 S.E.2d at

114 (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945)). Although a determination of whether the required minimum contacts are present necessarily hinges upon the facts of each case, there are several factors a trial court typically evaluates in determining whether the required level of contacts exists: "(1) quantity of the contacts between the defendant and the forum state, (2) quality and nature of the contacts, (3) the source and connection of the cause of action to the contacts, (4) the interest in the forum state, and (5) convenience of the parties." *Cameron-Brown*, 83 N.C.App. at 284, 350 S.E.2d at 114.

Jurisdiction exercised under North Carolina's long-arm statute can be classified as either specific or general. "Specific jurisdiction exists when the cause of action arises from or is related to defendant's contacts with the forum." *Id.*, 361 N.C. at 122, 638 S.E.2d at 210. "General jurisdiction exists when the defendant's contacts with the state are not related to the cause of action but the defendant's activities in the forum are sufficiently continuous and systematic" to permit the General Court of Justice to exert personal jurisdiction over that defendant. *Skinner*, 361 N.C. at 122, 638 S.E.2d at 210 (quotation omitted). "[G]eneral personal jurisdiction" may be exercised pursuant to N.C. Gen.Stat. § 1-75.4(1)(d). *Lang v. Lang*, 157 N.C.App. 703, 706, 579 S.E.2d 919, 921 (2003). "The threshold level of minimum contacts sufficient to confer general jurisdiction is significantly higher than for specific jurisdiction." *Woods Intern., Inc.*, 436 F.Supp.2d at 748 (quotation omitted).

The present dispute is not related to, nor did it arise from, Defendants' contacts with North Carolina.

As a result, the issue raised in this case involves general rather than specific jurisdiction. For that reason, the relevant question before both the trial court and this Court is whether Defendants' "activities in the forum are sufficiently continuous and systematic[,]" *Skinner*, 361 N.C. at 122, 638 S.E.2d at 210, a "higher threshold" than that required to support the exercise of specific jurisdiction. *Bruggeman*, 138 N.C.App. at 618, 532 S.E.2d at 219. As a result, we must determine on appeal whether the trial court's findings of fact support its legal conclusion that Defendants had "continuous and systematic contacts with North Carolina," thereby justifying the exercise of general personal jurisdiction over Defendants.

The "continuous and systematic contacts" required for the assertion of general personal jurisdiction must result from actions by Defendant rather than from mere happenstance or coincidence or the actions of others. In order for nonresidents like Defendants to be subject to the general personal jurisdiction of the General Court of Justice, they "must engage in acts by which they purposely avail themselves of the privilege of conducting activities within the forum State[.]" *Lulla v. Effective Minds, LLC*, 184 N.C.App. 274, 279, 646 S.E.2d 129, 133 (2007) (quotation omitted). "The purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or unilateral activity of another party or a third person." *Adams, Kleemeier, Hagan, Hannah & Fouts, PLLC v. Jacobs*, 158 N.C.App. 376, 381, 581 S.E.2d 798, 802, *rev'd on other grounds*, 357 N.C. 651, 588 S.E.2d 465 (2003) (quotation omitted). A "critical factor" in assessing "whether a nonresident defendant has made purposeful

availment of the privilege of conducting activities within the forum State" is whether the party "initiat[ed] the contact[.]" *Banc of Am. Secs. LLC v. Evergreen Int'l Aviation, Inc.*, 169 N.C.App. 690, 698, 611 S.E.2d 179, 185 (2005), *motion denied*, 2006 NCBS 2 (2006). (quotation omitted).

The necessary "purposeful availment" has been found where a corporation "delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298, 100 S.Ct. 559, 567-68, 62 L.Ed.2d 490, 502 (1980). In such cases, the United States Supreme Court has reasoned that:

> [I]f the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

World-Wide Volkswagen, 444 U.S. at 297-98, 100 S.Ct. at 567-68, 62 L.Ed.2d at 501-502. However, the Supreme Court disagreed over the proper interpretation of the principle enunciated in *World-Wide Volkswagen in Asahi Metal Ind. Co. v. Superior Court of California*, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987).

In *Asahi Metal*, Justice O'Connor writing for herself, Chief Justice Rehnquist, and Justices Powell and Scalia, stated that:

> The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. But a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum state.

Asahi Metal, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92. On the other hand, in a concurrence joined by Justices White, Marshall, and Blackmun, Justice Brennan stated that:

> A defendant who has placed goods in the stream of commerce benefits economically from the retail sale of the final product in the forum State, and indirectly benefits from the State's laws that regulate and facilitate commercial activity. These benefits accrue regardless of whether the participant directly conducts business in the forum State, or engages in additional conduct directed toward that State.

Asahi Metal, 480 U.S. at 117, 107 S.Ct. at 1034-35, 94 L.Ed.2d at 108, *Brennan, J., concurring in part and concurring in the judgment.* Justice Brennan described Justice O'Connor's stream of commerce "plus" standard as "a marked retreat from the analysis in *World-Wide Volkswagen* [.]" *Id.*, 480 U.S. at 118, 107 S.Ct. at 1035, 94 L.Ed.2d at 107. According to Justice Brennan, a "forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *Asahi Metal*, 480 U.S. at 119, 107 S.Ct. at 1035-36, 94 L.Ed.2d at 107. As a result, Justice Brennan concluded that sufficient minimum contacts existed in *Asahi Metal* because "Asahi was aware of the distribution system's operation, and it knew that it would benefit economically from the sale in California of products incorporating its components." *Asahi Metal*, 480 U.S. at 121, 107 S.Ct. at 1036-37, 94 L.Ed.2d at 107.[5] This Court has addressed the issue debated in *Asahi Metal* on several occasions, and has expressly declined in those cases to follow

[5] Justice Stevens also concluded that California lacked the authority to assert jurisdiction over the person of the defendant in *Asahi Metal* on the basis of a number of factors, such as the fact that all parties to the litigation in question were foreign nationals, that it would be highly inconvenient for the defendant to be haled into court in California, that all of the relevant events occurred outside the forum state, and that the forum state had no interests that would be protected by an assertion of jurisdiction. However, Justice Stevens did not join the approach adopted by Justice O'Connor in reaching this conclusion. Needless to say, the facts in *Asahi Metal* are distinguishable from the facts at issue here in a number of respects.

the approach to the "purposeful availment" issue advocated by Justice O'Connor in that case.

In *Bush v. BASF Wyandotte Corp.*, 64 N.C.App. 41, 306 S.E.2d 562 (1983), this Court addressed a case brought by a North Carolina plaintiff who was injured while operating a washing machine in connection with her employment. The machine had been manufactured by a Swedish corporation which sold several such machines to a New York distributor, which then, in turn, sold a washing machine to the plaintiff's employer. *Bush*, 64 N.C.App. 41, 306 S.E.2d 562. The defendant corporation made no attempt to exclude North Carolina from the area in which its products were distributed. The Court concluded in *Bush* that, because the defendant corporation "purposefully injected [its] product into the stream of commerce without any indication that it desired to limit the area of distribution of its product so as to exclude North Carolina[,] . . . the courts of North Carolina may lawfully assert personal jurisdiction over" the defendants. *Id.*, 64 N.C.App. at 51, 306 S.E.2d at 568.[6] Thus, the rule applicable in North Carolina prior to *Asahi Metal* was not consistent with the position enunciated in Justice O'Connor's opinion.

[6] The trial court exercised jurisdiction in *Bush* pursuant to N.C. Gen.Stat. § 1-75.4(4)(b), which provides that personal jurisdiction is proper "in any action claiming injury to person or property within this State arising out of an act or omission outside this State by the defendant, provided in addition that at or about the time of the injury" that "[p]roducts, materials or thing processed, serviced or manufactured by the defendant were used or consumed, within this State in the ordinary course of trade[.]" N.C. Gen.Stat. § 1-75.4(4)(b) does not apply to this case because the accident in which Decedents were killed did not occur within North Carolina.

A few years later, in *Warzynski v. Empire Comfort Systems, Inc.*, 102 N.C.App. 222, 229, 401 S.E.2d 801, 805 (1991), this Court noted that "[a] majority of the [United States Supreme] Court did not join in the section of the *Asahi* opinion that attempts to question the stream of commerce doctrine;" for that reason, we concluded that "Asahi does not overrule previous cases that follow the stream of commerce theory, including *Bush v. BASF*." *Warzynski*, 102 N.C.App. at 228, 401 S.E.2d at 805. As a result, the *Warzynski* Court concluded that, because the defendant manufacturer, a Spanish company, gave the defendant seller "an exclusive right to sell the heaters in the United States with no limit as to North Carolina[,]" the defendant manufacturer therefore "injected its product into the stream of commerce and subjected itself to the jurisdiction of the courts of this state." *Id.*, 102 N.C.App. at 227-29, 401 S.E.2d at 804.

Similarly, in *Cox v. Hozelock, Ltd.*, 105 N.C.App. 52, 57, 411 S.E.2d 640, 643, *disc. review denied*, 331 N.C. 116, 414 S.E.2d 752, *cert. denied*, 506 U.S. 824, 113 S.Ct. 78, 121 L.Ed.2d 42 (1992), this Court stated that:

> [W]e cannot agree that the impact of *World-Wide* has been significantly lessened due to the recent Supreme Court decision in *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987)[,]" because "[t]he Court was evenly split . . . as to the ramifications of *World-Wide* and whether intentionally placing a product in the stream of commerce, without more, provided a sufficient basis for jurisdiction over a foreign defendant."

Hozelock, 105 N.C.App. at 57, 411 S.E.2d at 644 (1992). In light of that determination, we held that "the sole act of a manufacturer's intentional injection of his product into the stream of commerce provides sufficient grounds for a forum state's exercise of personal jurisdiction over the foreign manufacturer defendant," thus allowing "the North Carolina court [to] properly invoke personal jurisdiction[.]" *Id.*, 105 N.C.App. at 57, 411 S.E.2d at 644.[7]

In *Carswell Distrib. Co. v. U.S.A.'s Wild Thing*, 122 N.C.App. 105, 107-108, 468 S.E.2d 566, 568-69 (1996), this Court stated:

> Minimum contacts can be found when the out-of-state defendant injects products into the "stream of commerce" with the expectation that the products will reach the forum state. *World-Wide Volkswagen Corp.*, 444 U.S. at 298, 100 S.Ct. at 567-68, 62 L.Ed.2d at 502. North Carolina courts have applied stream of commerce analysis to support the exercise of personal jurisdiction in defective product cases. E.g., *Warzynski v. Empire Comfort Systems*, 102 N.C.App. 222, 228-29, 401 S.E.2d 801, 805 (1991) (holding a corporation subject to the jurisdiction of our courts when it has "purposefully injected" a product into "the stream of commerce" without limiting the area of distribution "so as to exclude North Carolina"). North Carolina cases that use stream of commerce analysis have not been overruled by the United States Supreme Court's decision in *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987).

[7] Personal jurisdiction in Hozelock was also determined to be proper pursuant to N.C. Gen.Stat. § 1-75.4(4)(b).

Cox v. Hozelock, Ltd., 105 N.C.App. 52, 57, 411 S.E.2d 640, 644, *disc. review denied*, 331 N.C. 116, 414 S.E.2d 752, *cert. denied*, 506 U.S. 824, 113 S.Ct. 78, 121 L.Ed.2d 42 (1992); Warzynski, 102 N.C.App. at 229, 401 S.E.2d at 805.

U.S.A.'s Wild Thing, 122 N.C.App. at 107-108, 468 S.E.2d at 568-69. In *U.S.A.'s Wild Thing*, the defendant "entered into a manufacturing agreement with . . . a company that served as the distributor for [a product manufactured by the defendant] throughout the United States, Mexico, and Canada." *Id.*, 122 N.C.App. at 108, 468 S.E.2d at 568. According to this Court, "[b]y shipping [its product] to plaintiff in North Carolina pursuant to this agreement [the distributor] intentionally injected its [product] into the stream of commerce and purposefully availed itself of the benefit of North Carolina markets." *Id.*

After reviewing these decisions, we conclude that the appropriate question that must be answered in order to determine whether Defendants are "subject to the jurisdiction of the courts of this state" is whether Defendants have "purposefully injected [their] product into the stream of commerce without any indication that [they] desired to limit the area of distribution of [their] product so as to exclude North Carolina." *Bush*, 64 N.C.App. at 51, 306 S.E.2d at 568; *but see Putnam v. Triangle Publications, Inc.*, 245 N.C. 432, 96 S.E.2d 445 (1957) (holding that personal jurisdiction could not be exercised over a foreign defendant who sold magazines to distributors within this State, but delivered and surrendered title to the magazines to carriers outside North Carolina); *Moss v. City of Winston-Salem*, 254 N.C. 480, 119 S.E.2d 445 (1961) (holding that personal jurisdiction

was not present, even though the Illinois defendant lawn mower manufacturer intentionally placed a lawn mower in the stream of interstate commerce and sold it to an unrelated distributor, which then sold the mower to a business in North Carolina).[8] Thus, we must evaluate the validity of the trial court's decision that Goodyear France, Goodyear Luxembourg, and Goodyear Turkey were subject to the jurisdiction of the Onslow County Superior Court by examining whether the trial court's findings of fact, considered in their entirety, provide an adequate basis for a conclusion that Defendants had "continuous and systematic contacts with North Carolina" in light of the well-established legal principle outlined above.

As an initial matter, we note that several of the trial court's "findings of fact" are improperly classified, at least in part, as findings of fact rather than conclusions of law. In these improperly classified findings of fact, the trial court stated that:

> 14. The defendants purposefully and deliberately availed themselves of the North Carolina market for tires and substantially profited from sales of their tires in North Carolina.
>
> 15. The defendant companies have continuous and systematic contacts with North Carolina and are conducting substantial activity within North Carolina.

[8] *Putnam* and *Moss* antedate *World-Wide Volkswagen*; as a result, this Court has stated that "[t]he precedential value of both *Moss* and *Putnam*, by their own reasoning, must therefore yield to the rationale of *World-Wide*." *Hozelock*, 105 N.C.App. at 57, 411 S.E.2d at 643.

See State ex rel. Utilities Com. v. Eddleman, 320 N.C. 344, 351, 358 S.E.2d 339, 346 (1987), *later proceeding*, 322 N.C. 689, 370 S.E.2d 567 (1988) (stating that "[f]indings of fact are statements of what happened in space and time"). In light of the fact that these findings involve statements that Defendants "purposefully and deliberately availed themselves of the North Carolina market," "have continuous and systematic contacts with North Carolina," and "are conducting substantial activity within North Carolina," and the fact that these statements amount to determinations that the applicable legal standards have been met rather than "statements of what happened in space and time," we will not include these portions of finding of fact numbers 14 and 15 in our analysis of the sufficiency of the factual findings in the trial court's order to support its conclusion that Defendants were subject to the jurisdiction of the Onslow County Superior Court.

In addition, as another preliminary matter, the trial court stated in finding of fact numbers 17 and 21 that Defendants "caused" a certain number of tires to be shipped into North Carolina. However, the record appears to be devoid of evidence that Defendants took any affirmative action to cause tires which they had manufactured to be shipped into North Carolina. On the contrary, the available evidence tends to show that other entities were responsible for the shipment of tires manufactured by Defendants to the United States and, as a part of that process, the tires arrived in North Carolina. As a result, our analysis of the trial court's findings is informed by our understanding that Defendants, as separate corporate entities, were not directly responsible for

the presence in North Carolina of tires that they had manufactured.

Defendants also argue that finding of fact numbers 4 and 5 are not supported by competent evidence because they were "based solely on incompetent statements in Mr. Och's affidavit[.]" We disagree. Findings of fact numbers 4 and 5 state the following:

> 4. The subject tire contained information that was written entirely in English, including warnings and directions, U.S. Department of Transportation markings placed on the tire to allow it to be sold in the United States, and markings to show it was manufactured as qualified for sale in the United States.
>
> 5. The subject Goodyear Regional tire has a U.S. code listing load and pressure ratings that conform to United States standards set by the Tire and Rim Association, the standardizing organization for the tire industry in the United States. The tire also contains a "Safety Warning," written in English, which conforms to the warnings found on all tires for sale in the United States.

Ochs's affidavit reveals that he "traveled to France and personally inspected the tire that is at issue in this case." Ochs discovered the following pertinent information as a result of his inspection of the tire: (1) "[b]ased on the serial number on the tire, which is required by the U.S. Department of Transportation for tires sold in the United States, the tire was manufactured at a Goodyear plant in Izmit, Turkey, owned by Goodyear Lastikleri T.A.S."; (2) "[t]he tire at issue contained additional U.S. Department of Transportation markings that were

placed there to allow the tire to be sold in the United States"; (3) "[t]he tire at issue contained information showing that it was manufactured as qualified for sale in the United States"; (4) "[t]he tire at issue had a U.S. code listing load and pressure ratings that conform to United States standards set by the Tire and Rim Association, the standardizing organization for the tire industry in the United States"; (5) "[t]he tire at issue contains a 'Safety Warning,' written in English, that conforms to the warnings found on every tire for sale in the United States"; (6) "[a]ll of the information found printed on the tire is written in English, and the tire was manufactured and labeled in such a way as to allow it to be sold in the United States"; (7) "[b]ased on my knowledge of tire manufacturing and the European tire market, this tire was designed, manufactured and marketed for sale worldwide, including sale in the United States and North Carolina." These excerpts from Ochs' affidavit contain competent evidence to support the trial court's finding of fact numbers 4 and 5. *See Fox v. Gibson*, 176 N.C.App. 554, 558, 626 S.E.2d 841, 844 (2006) (upholding findings of fact in the context of personal jurisdiction as supported by competent evidence based on information contained in various affidavits). The associated dispute the validity of the remaining findings of fact on appeal, we must now "conduct a *de novo* review of the trial court's conclusions of law and determine whether, given the facts found by the trial court, the exercise of personal jurisdiction would violate defendant's due process rights." *Deer Corp.*, 177 N.C.App. at 322, 629 S.E.2d at 166.

The trial court's factual findings which were either undisputed by Defendant or supported by competent evidence indicate that the tire that

Plaintiffs allege was involved in the accident resulting in Decedents' deaths "contained additional U.S. Department of Transportation markings that were placed there to allow the tire to be sold in the United States" and also "contained information showing that it was manufactured as qualified for sale in the United States." More particularly, the tire had "a U.S. code listing load and pressure ratings that conform to United States standards set by the Tire and Rim Association, the standardizing organization for the tire industry in the United States." Moreover, the tire contained "a 'Safety Warning,' written in English[.]" Although Kramer opined that the presence of "DOT specifications" on the relevant Goodyear Regional RHS tire "doesn't necessarily mean that the tire is destined to be used in the United States," the existence of these markings does indicate, as the trial court found, that the tire in question was manufactured in such a manner that it could, if business conditions supported such a move, be sold in the United States. Thus, at an absolute minimum, the manufacturer contemplated that the tire might be sold in this country.

Furthermore, the trial court's findings establish that tires manufactured by Defendants were shipped to the United States for sale and that there was no attempt to keep these tires from reaching the North Carolina market. The evidence tends to show that the extent to which tires manufactured by Defendants were sold in the United States depended on the extent to which Goodyear affiliates responsible for distributing tires in the United States exercised the option that was available to them of having tires needed for sale in the United States manufactured by one of the Defendants. In addition, the trial court

found that tires manufactured by each Defendant were actually sold in North Carolina. From 2004 to 2007, 6,402 tires manufactured by Goodyear Luxembourg were ultimately shipped to locations in North Carolina. Similarly, 33,923 tires manufactured by Goodyear France reached North Carolina during the same period. Finally, 4,059 tires manufactured by Goodyear Turkey were shipped into North Carolina for sale during this interval. Furthermore, as the trial court noted, other tires manufactured by Defendants may have reached North Carolina during this time, since the figures set forth above do not include "vehicles equipped with tires from [Defendants] imported into the [United States] and shipped into North Carolina for sale each year." According to the trial court's findings, the distribution chain through which tires manufactured by Defendants were shipped into the United States and, eventually, into North Carolina, was "a continuous and systematic" process rather than a sporadic or episodic one. As a result, the trial court's findings indicated that, through a regular process employed within the Goodyear organization, a substantial number of tires manufactured by the Defendants were imported into the United States and distributed to various entities in North Carolina.

In addition to the evidence reflecting Defendants' contacts with North Carolina, the trial court's findings reflect that North Carolina has an interest in this proceeding given that Plaintiffs seek redress for injuries sustained by North Carolina citizens. In addition, the record reflects that requiring Plaintiffs, who have no ties to France, to litigate their claims in the French courts would impose a considerable burden on them. Although there is no question but that requiring Defendants to defend an action in the

General Court of Justice would be burdensome as well, that burden is alleviated to some extent by the fact that Defendants have corporate affiliates in the United States with business interests in North Carolina, a fact which is simply not true of Plaintiffs.

As in *Bush, Warzynski, Hozelock*, and *U.S.A.'s Wild Thing*, Defendants have, without question, purposefully and intentionally manufactured tires and placed them in the stream of interstate commerce without any limitation on the extent to which those tires could be sold in North Carolina. Defendants also knew or should have known that a Goodyear affiliate obtained tires manufactured by Defendants and sold them in the United States in the regular course of business. The record further demonstrates that several thousand tires manufactured by each of the Defendants eventually found their way into North Carolina markets through the operation of a continuous and highly-organized distribution process. The number of tires at issue in this case is much greater than the number of sales that have been deemed sufficient in other cases, such as *Dillon*, 291 N.C. 674, 231 S.E.2d 629 (deeming 27 sales in North Carolina sufficient to support a finding of general jurisdiction), and *Hankins v. Somers*, 39 N.C.App. 617, 251 S.E.2d 640, *cert. denied*, 297 N.C. 300, 254 S.E.2d 920 (1979) (deeming sales of "wire art" in North Carolina to a "substantial extent" sufficient to support a finding of general personal jurisdiction). Finally, North Carolina has a well-recognized interest in providing a forum in which its citizens are able to seek redress for injuries that they have sustained, and a greater burden would be imposed upon Plaintiffs in the event that they were required to litigate their claims in France compared to the burden that would be imposed upon

Defendants in the event that they are required to defend Plaintiffs' claims in the General Court of Justice. In light of all these facts, Defendants could, consistently with considerations of due process and fundamental fairness, reasonably expect to be subject to the jurisdiction of the North Carolina courts, so that the exercise of personal jurisdiction over Defendants would not violate the due process clause.

Defendants' principal challenge to the trial court's order rests on the assertion that "stream of commerce" analysis simply does not apply in instances involving general, as compared to specific, jurisdiction. Defendants have not cited a North Carolina case to this effect, and we know of none. On the other hand, *U.S.A.'s Wild Thing* does not appear to involve an exercise of specific jurisdiction. Instead of adopting a general rule precluding the use of stream of commerce analysis to support a finding of general personal jurisdiction, we believe that the real issue is the extent to which Defendants' products were, in fact, distributed in North Carolina markets. Although we might agree with Defendants' contention in the event that the record demonstrated that only a few tires reached North Carolina through a limited distribution process, that is not the situation present here. Instead, the trial court's findings reflect that thousands of tires manufactured by each of the Defendants were distributed in North Carolina as the result of a highly organized distribution process that involved Defendants and other Goodyear affiliates. Thus, we believe that, on the facts of this case, sufficient basis exists to support a finding of general personal jurisdiction under N.C. Gen.Stat. § 1-75.4(1)d and the due process clause.

As a result, after a thorough review of the record, and consistent with the principles outlined by this Court in *U.S.A.'s Wild Thing*, 122 N.C.App. 105, 468 S.E.2d 566, *Hozelock*, 105 N.C.App. 52, 411 S.E.2d 640, *Warzynski*, 102 N.C.App. 222, 401 S.E.2d 801, and *Bush*, 64 N.C.App. 41, 306 S.E.2d 562, we hold that the facts found in the trial court's order support its conclusion that Defendants "purposefully injected [their] product into the stream of commerce without any indication that [they] desired to limit the area of distribution of [their] product so as to exclude North Carolina," *Bush*, 64 N.C.App. at 51, 306 S.E.2d at 568, and thereby purposefully availed themselves of the protection of the laws of this State. The trial court's findings are supported by competent evidence, and the findings in turn support the conclusion that the exercise of general personal jurisdiction over Goodyear Luxembourg, Goodyear Turkey, and Goodyear France was appropriate pursuant to N.C. Gen.Stat. § 1-75.4(1)(d) and the due process clause. As a result, the trial court did not err in exercising general jurisdiction over Defendants and denying their dismissal motions pursuant to N.C. Gen.Stat. § 1A-1, Rule 12(b)(2). Thus, the trial court's order should be, and hereby is, affirmed.

AFFIRMED.

Judges WYNN and STEPHENS concur.

APPENDIX B

NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
ONSLOW COUNTY	SUPERIOR COURT DIVISION 05 CVS 1922

EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS,

Plaintiffs,

v.

ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY , GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and

ORDER

GOODYEAR DUNLOP TIRES FRANCE SA.,)
)
)
Defendants.)

THIS CAUSE coming on to be heard and being heard before the undersigned Judge presiding over the December 10, 2007, term of the Onslow County Superior Court, upon motions of the defendants Goodyear Luxembourg Tires SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA., (hereinafter "the defendants") to dismiss for lack of personal jurisdiction, and the Court having considered the pleadings and all affidavits, depositions and other documents on file at the hearing, and having heard arguments of counsel, finds the following facts:

1. Matthew Helms of Jacksonville and Julian Brown of Charlotte, two 13-year-old youth soccer players, died from injuries suffered in a bus wreck that occurred on April 18, 2004, near Paris, France. Plaintiffs have alleged that as the decedents rode on a bus headed to the airport in Paris to return home to North Carolina, one of the bus' tires, designed, manufactured and distributed by the Goodyear defendants, failed when its plies separated, causing the bus to leave the highway and overturn.

2. Defendants Goodyear Luxembourg Tires, SA; Goodyear Lastikleri T.A.S.; and Goodyear Dunlop Tires France SA (hereinafter "defendants") moved to dismiss for lack of personal jurisdiction, pursuant to Rule 12(b)(2) of the N.C. Rules of Civil Procedure and N.C. G.S. § 1-75.4.

3. The subject tire that allegedly failed was a Goodyear Regional tire, which was manufactured by defendant Goodyear Lastikleri T.A.S., located in Turkey.

4. The subject tire contained information that was written entirely in English, including warnings and directions, U.S. Department of Transportation markings placed on the tire to allow it to be sold in the United States, and markings to show it was manufactured as qualified for sale in the United States.

5. The subject Goodyear Regional tire has a U.S. code listing load and pressure ratings that conform to United States standards set by the Tire and Rim Association, the standardizing organization for the tire industry in the United States. The tire also contains a "Safety Warning," written in English, which conforms to the warnings found on all tires for sale in the United States.

6. During the period from 2004 through a portion of 2007, at least 5906 tires made by Goodyear Lastikleri T.A.S. were shipped into North Carolina for sale, although not by the original manufacturer.

7. During the period from 2004 through a portion of 2007, at least 33,923 tires made by Goodyear Dunlop Tires France SA were shipped into North Carolina for sale, although not by the original manufacturer.

8. During the period from 2004 through a portion of 2007, at least 6402 tires made by Goodyear Luxembourg Tires SA were shipped into North Carolina for sale, although not by the original manufacturer.

9. The number of tires shipped into North Carolina from each of these manufacturers may actually be substantially higher, in that The Goodyear Tire and Rubber Company (hereinafter "Goodyear"), after being noticed for a 30(b)(6) deposition, failed to determine how many vehicles equipped with tires from these foreign defendant manufacturers are imported into the U.S. and shipped into North Carolina for sale each year.

10. The defendants, on a continuous and systematic basis, caused tires to be sent into the United States for sale, and knew or should have known that some of those tires were distributed for sale to North Carolina residents, and the defendants continue to send tires for sale into the United States and know or should know that some of those tires continue to be sold to North Carolina residents on a continuous and systematic basis.

11. The sale of these tires generates substantial revenue for Goodyear, these defendant companies and its related companies.

12. The defendants, as manufacturers, did not have their own distribution system for the sale of their tires, but instead used their Goodyear parent and affiliated companies to distribute the tires they manufactured to the United States and North Carolina.

13. The defendants knew or should have known that tires they manufactured were shipped to the United States through their Goodyear parent and affiliated companies and sold in North Carolina on a continuous and systematic basis.

14. The defendants purposefully and deliberately availed themselves of the North Carolina market for

tires and substantially profited from sales of their tires in North Carolina.

15. The defendant companies have continuous and systematic contacts with North Carolina and are conducting substantial activity within North Carolina

16. Defendant Goodyear Lastikleri T.A.S. is a wholly owned subsidiary of defendant The Goodyear Tire and Rubber Company, which is based in the United States. All three of the foreign defendant companies are subsidiaries of Goodyear in the United States and as such have additional, abundant ties to the United States.

17. The defendant companies have deliberately attempted to take advantage of the tire market in North Carolina by designing, manufacturing and causing tires to be distributed for sale to the North Carolina market, and those tires are sold in North Carolina.

18. Because all three companies have manufactured tires shipped into North Carolina for sale that by clear implication and inference are used on thousands of vehicles throughout North Carolina, they could reasonably anticipate being haled into court in North Carolina.

19. The quantity of the defendants' contacts with North Carolina, which includes sales of between 5,900 and 34,000 tires within the state, generating substantial revenues and substantial commercial activity in North Carolina, weighs in favor of a finding of general jurisdiction over the defendants.

20. The quality of those contacts, which include systematic and repeated contacts with the state of North Carolina for the purpose of commerce, along

with the defendants' ownership by U.S. corporations doing substantial business in North Carolina, weighs in favor of a finding of general jurisdiction over the defendants.

21. The cause of action in this case is closely related to the contacts with the defendants, in that the defendants are causing substantial quantities of tires they manufactured to be sold in North Carolina, and plaintiffs seek to exercise jurisdiction related to a defect in a tire designed, manufactured, distributed or sold by the defendants.

22. North Carolina has a substantial interest in allowing its citizens a forum for the redress of grievances, especially where two of its citizens have been killed, allegedly by the negligence of the defendants.

23. The foreign Goodyear defendants are not inconvenienced by the trial of this action in North Carolina, in that they do substantial and continuous business in North Carolina, they are subsidiaries of a United States corporation that does substantial and continuous business in North Carolina, and they are represented by the same attorneys as are representing their U.S. parent corporation.

24. The plaintiffs, parents of the deceased boys, would be substantially inconvenienced by litigating this case in foreign countries.

Based on the foregoing findings of fact, the Court concludes as a matter of law:

1. The defendants have continuous and systematic ties with the State of North Carolina.

2. The defendants' activities in North Carolina are substantial.

3. The quantity of the defendants' contacts with North Carolina; the nature and quality of those contacts; the source and connection of the cause of action to the contacts; the interest of North Carolina in this cause of action and the convenience of the parties, all weigh in favor of the exercise of general jurisdiction over the defendants.

4. Exercise of general jurisdiction over the defendants comports with Due Process and does not offend traditional notions of fair play and justice.

THEREFORE, The Court finds that this court can properly exercise general jurisdiction over the defendants Goodyear Luxembourg Tires SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA. Defendants' motions to dismiss for lack of personal jurisdiction are hereby DENIED.

This the 25th day of April 2008.

s/ Gary Trawick

The Honorable Gary E. Trawick

Superior Court Judge Presiding

APPENDIX C

Supreme Court of North Carolina

Edgar D. BROWN and Pamela Brown, Co-Administrators of the Estate of Julian David Brown, and Karen M. Helms, Administratrix of the Estate of Matthew M. Helms

v.

Eric R. METER, French Soccer Network, European Soccer Network, North Carolina Youth Soccer Association, Inc., The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires, SA, Goodyear SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires Frances, SA.

No. 392P09.

April 14, 2010.

William K. Davis, for Goodyear Luxembourg Tires SA, et al.

Charlot F. Wood.

Kevin G. Williams.

Michael D. Phillips.

David F. Kirby, for Edgar D. Brown, et al.

William B. Bystrynski.

Ronald C. Dilthey, for NCYSL.

Dan J. McLamb, for Meter, Eric R.

Jonathan A. Berkelhammer.

C. Fredric Marcinak, III.

Andrew S. Chamberlin.

Stephen D. Feldman.

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by the Defendants (Goodyear Luxembourg Tires, et al.) on the 22nd of September 2009 in this matter pursuant to G.S. 7A-30, and the motion to dismiss the appeal for lack of substantial constitutional question filed by the Plaintiffs, the following order was entered and is hereby certified to the North Carolina Court of Appeals: the motion to dismiss the appeal is

> "Allowed by order of the Court in conference, this the 14th of April 2010."

Upon consideration of the petition filed on the 22nd of September 2009 by Defendants (Goodyear Luxembourg Tires, et al) in this matter for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

> "Denied by order of the Court in conference, this the 14th of April 2010."

OPPOSITION BRIEF

No. 10-76

IN THE

Supreme Court of the United States

GOODYEAR LUXEMBOURG TIRES, S.A.,
GOODYEAR LASTIKLERI T.A.S. AND
GOODYEAR DUNLOP TIRES, FRANCE,

Petitioners,

v.

EDGAR D. BROWN AND PAMELA BROWN,
CO-ADMINISTRATORS OF THE ESTATE OF
JULIAN DAVID BROWN, AND KAREN M. HELMS,
ADMINISTRATRIX OF THE ESTATE OF
MATTHEW M. HELMS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
NORTH CAROLINA COURT OF APPEALS

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Where Petitioners claim certiorari should be allowed to demonstrate that the "stream of commerce" theory can be used only in analyzing cases of specific jurisdiction, as opposed to general jurisdiction, have Petitioners presented compelling reasons to grant the writ where the North Carolina trial court never engaged in a stream of commerce analysis and Respondents have repeatedly and clearly stated in their appellate briefs that no stream of commerce analysis should be used?

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STATEMENT

This is a wrongful death case filed in the state courts of North Carolina involving two 13-year-old boys, Matthew Helms of Jacksonville, N.C., and Julian Brown of Charlotte, N.C. Both boys were youth soccer players who were killed in a bus wreck near Paris, France. The boys had traveled to France as part of a trip arranged for players considered the best under age 14 youth soccer players in North Carolina.

The complaint alleges that on April 18, 2004, as they were on a bus headed to the airport in Paris to return home, one of the bus' Goodyear tires failed when its plies separated. The bus driver lost control of the bus and it overturned, killing both boys.

The initial suit named the company responsible for the trip, among others, as defendants. Plaintiffs later learned that a French criminal negligent homicide investigation, conducted after the wreck, found that one of the bus tires was defective and a cause of the wreck. Plaintiffs amended their complaint, filing suit in North Carolina against several defendants, including Goodyear Tire & Rubber Co. and three subsidiary foreign corporations – Goodyear Lastikleri TAS, a Turkish company; Goodyear Luxembourg Tires SA; and Goodyear Dunlop Tires France (hereinafter the Goodyear foreign defendants). Plaintiffs alleged that the three subsidiaries designed, manufactured and distributed the defective tire, and that they breached express and implied warranties.

The Goodyear foreign defendants filed motions to dismiss for lack of personal jurisdiction, alleging that each of the foreign Goodyear corporations lacked the requisite minimum contacts and could not reasonably anticipate being haled into court in North Carolina.

The parent company, defendant Goodyear Tire & Rubber Co., which had previously stated in affidavits that its three foreign subsidiaries did not do any business in North Carolina, later admitted in discovery that the companies manufactured at least 44,000 tires shipped for sale into North Carolina in the previous three years.

The trial court found that the Goodyear foreign defendants, through their connection with their U.S. parent company and sales here, had sufficient continuous and systematic contacts with North Carolina to be subject to personal jurisdiction in the state. In particular, the court analyzed the quantity of the defendants' contacts with North Carolina, the nature and quality of those contacts, the interest of North Carolina in the cause of action and the convenience of the parties. Pet. App. 36a. The court determined that "Exercise of general jurisdiction over the defendants comports with Due Process and does not offend traditional notions of fair play and justice." *Id.* The trial court did not perform a "stream of commerce" analysis, and never mentioned that phrase.

From that order, defendants appealed to the N.C. Court of Appeals, which unanimously upheld the trial court's order. The North Carolina Supreme Court refused the defendants' petition for discretionary review and denied their appeal.

REASONS FOR DENYING THE PETITION

I. Respondents Are Not Using The "Stream Of Commerce" Theory To Demonstrate General Jurisdiction.

Petitioners' sole reason for contending that this court should grant *certiorari* is because they believe the state court erroneously applied the stream of commerce theory of personal jurisdiction to a case involving general jurisdiction. Pet. 1-2.

In this case, however, the trial court did not perform a stream of commerce analysis in concluding general personal jurisdiction was proper. Instead, it found facts from the evidence, conducted a constitutionally correct analysis and concluded that jurisdiction was appropriate. There is not even a hint in the court's order that it considered the stream of commerce theory.

Rather than a battle over the question of whether the "stream of commerce" applies to a general jurisdiction case, plaintiffs have *repeatedly* stated in their appellate briefs that they are not attempting to apply the stream of commerce theory to this case. For example, in their brief to the N.C. Court of Appeals, plaintiffs wrote:

> The "stream of commerce" doctrine states that a manufacturer that injects a single item into the stream of commerce, without directing it at the forum state, but knowing it might reach the forum state, may be sued in the forum state if the product injures someone there.

> *This is not the test plaintiffs are attempting to apply.* Instead, our courts have stated that general jurisdiction may be asserted over a defendant when the cause of action is unrelated to defendant's activities in the forum "as long as there are sufficient 'continuous and systematic' contacts between defendant and the forum state.

Plaintiffs' brief to N.C. Court of Appeals, p. 30 (*emphasis added*).

In their brief to the N.C. Supreme Court, plaintiffs stated:

> *Plaintiffs are not asserting there are minimum contacts with defendants on a 'stream of commerce' claim,* in which the defendants had nothing to do with where their product eventually ended up. Instead, plaintiffs are alleging that the defendants are part of a highly targeted, integrated world-wide effort to design, manufacture, market and sell their tires in the United States, including North Carolina. Those thousands of tires sold here are not incidental contacts, but instead are calculated and deliberate efforts to take advantage of the North Carolina market for tires.

Plaintiff's brief p. 21 (*emphasis added*).

Far from attempting to apply the stream of commerce notion to this case, one of the headings of plaintiffs' brief to the N.C. Court of Appeals was: "Defendants' 'Stream Of Commerce' Arguments Are Misdirected In That They Refer To A Doctrine That Does Not Apply In This Case." Plaintiffs' brief p. 24.

Nonetheless, petitioners claim that *certiorari* should be allowed to decide a dispute over whether the stream of commerce applies to cases of general jurisdiction.

Instead of raising that issue, this case is one in which the trial court found facts from the evidence and to those facts applied a constitutionally correct analysis of whether the court could exercise jurisdiction. The N.C. Supreme Court ultimately concluded that the trial court was correct and denied the defendants' appeal and request for discretionary review.

Nowhere in the trial court's analysis did it use the term "stream of commerce" and nowhere did it perform such an analysis.

Since this case ultimately is an appeal of the trial court's order, we should assess that order more closely to ensure that the court's review was constitutionally appropriate.

II. The Trial Court's Assessment And Order Were Constitutionally Correct.

The issue before the trial court was one of personal jurisdiction in which both sides presented evidence, including affidavits, expert testimony, photographs and depositions. The trial court, therefore, was required to act as fact finder, determining the credibility of the evidence presented to it.

The trial court, as fact finder in personal jurisdiction cases, is permitted to make judgments regarding the credibility of the evidence and of the witnesses, and under North Carolina law, those judgments cannot be disturbed on appeal, as long as they are supported by competent evidence in the record. *See Deer Corp. v. Carter*, 117 N.C. App. 314, 629 S.E.2d 159 (2006) (where it appeared the trial court believed one party over another witness regarding jurisdictional evidence, the appeals court is "not free to revisit questions of credibility or weight that have already been decided by the trial court." *Id.* at 324, 629 S.E.2d 267, *citing Banc of America Securities LLC v. Evergreen Intern*, 169 N.C. App. 690, 695, 611 S.E.2d 179, 183 (2005)).

In assessing the evidence, the trial court found many facts demonstrating defendants' continuous and systematic ties with North Carolina.

In *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984), this court stated: "When a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum, the State has been said to be

exercising 'general jurisdiction' over the defendant." *Id.* at 414 n. 9. General jurisdiction is appropriate where the defendant's contacts with the forum state are "continuous and systematic," the court said. *Id.* at 416.

In this case, the trial court examined the evidence, and found that the Goodyear foreign defendants had both continuous and systematic ties to the forum state.

In reviewing the evidence before the trial court, the N.C. Court of Appeals noted that much of the evidence in the case was undisputed by the defendants. "Defendants do not dispute that the majority of the trial court's findings of fact are supported by adequate evidentiary support." Pet. App. 11a.

The evidence reviewed by the court showed that the foreign Goodyear defendants manufactured the tire at issue, which was written entirely in English, with warnings and directions, and U.S. Department of Transportation markings to allow it to be sold in the United States. They included a U.S. code listing load and pressure ratings set by the U.S. Tire and Rim Association, and a "Safety Warning," written in English that conforms to the warnings found on all tires sold in the United States. Pet. App. 24a.

The court found that the three foreign Goodyear companies manufactured a total of more than 44,000 tires sold in North Carolina during a 3-year period, and found that that number might be substantially higher, given that Goodyear failed to answer 30(b)(6) deposition questions authorized by the court. Pet. App. 5a, 33a.

The trial court specifically found that "The defendants knew or should have known that tires they manufactured were shipped to the United States through their Goodyear parent and affiliated companies and sold in North Carolina on a continuous and systematic basis." Pet. App. 6a-7a. The court also found that the defendants are all subsidiaries of Goodyear in the United States and have "additional abundant ties to the United States." Pet. App. 7a.

The trial court, having reviewed all of the evidence, concluded as a matter of law that "The defendants have continuous and systematic ties with the State of North Carolina." Pet. App. 9a. This is exactly the test that the *Helicopteros* Court approved for cases involving general jurisdiction.

III. The Trial Court And The N.C. Court Of Appeals Conducted An Extensive Analysis To Ensure That Traditional Notions Of Fair Play And Substantial Justice Were Not Offended By An Exercise of Jurisdiction.

In reviewing the trial court's opinion, the N.C. Court of Appeals stated that personal jurisdiction cannot be exercised over a defendant "unless the defendant has had certain 'minimum contacts' with the forum state such that 'traditional notions of fair play and substantial justice' are not offended by maintenance of the suit." Pet. App. 11a., *citing Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

The trial court used a five-part test, authorized by North Carolina courts, to aid in this analysis. The

factors to be considered are: (1) the quantity of the contacts, (2) the nature and quality of the contacts, (3) the source and connection of the cause of action to the contacts, (4) the interest of the forum state, and (5) convenience. Pet. App. 34a-35a, *Fraser v. Littlejohn*, 96 N.C. App. 377, 383, 386 S.E.2d 230, 234 (1989).

The trial court found that these factors all weighed in the favor of the plaintiffs, and that the exercise of jurisdiction comported with Due Process.

Taking these factors in turn:

a. Quantity of the contacts. The three foreign Goodyear defendants admitted that some 44,000 tires they have manufactured or designed were sent to this state for sale. (Goodyear Lastikleri, 5,906 tires; Goodyear Luxembourg Tires SA, 6,402 tires; Goodyear Dunlop Tires France SA, 33,923 tires). Those tires "come in on a regular basis," according to Goodyear's 30(b)(6) designee. (Dep. Kramer, p. 21).

b. The nature and quality of the contacts. In this case, the contacts are not fleeting, such as mere phone calls into the state, or advertisements in national publications that happen to reach North Carolina. Instead, defendants are attempting to sell as many tires as possible in North Carolina. Defendants purposefully and intentionally send tires from their subsidiary foreign manufacturers, importing them into the United States and selling them in the North Carolina market.

The Court of Appeals stated:

> According to the trial court's findings, the distribution chain through which tires manufactured by Defendants were shipped into the United States and, eventually, into North Carolina, was "a continuous and systematic process" rather than a sporadic or episodic one. As a result, the trial court's findings indicated that, through a regular process employed within the Goodyear organization, a substantial number of tires manufactured by the Defendants were imported into the United States and distributed to various entities in North Carolina.

Pet. App. 26a.

Goodyear sells tires from these defendants in North Carolina on a continuing basis, through a highly integrated structure, and is doing so today. In conducting this business, "the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws . . ." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

"Thus where the defendant deliberately has engaged in significant activities within a State, or has created continuing obligations between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by the benefits and

protections of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-476 (1985) (citations omitted).

Defendants' contacts with the state were found to be both continuous and systematic. They do business in North Carolina by repeatedly selling thousands of tires within the state to the state's citizens. Those sales are admitted to have taken place on a regular basis over the previous three years.

The nature and quality of the contacts with North Carolina supported the trial court's finding of general jurisdiction.

c. The source and connection of the cause of action to the contacts. General jurisdiction permits the exercise of jurisdiction over a defendant even when the cause of action is completely unrelated to the source of the contacts.

In this case, however, there is a very significant nexus between the contacts with North Carolina and the cause of action. The defendants' contacts with North Carolina consist of thousands of tires they manufacture being shipped to North Carolina and sold to its residents, generating hundreds of thousands of dollars in revenue. Thousands of the defendants' tires are being used on thousands of vehicles today in North Carolina.

It is foreseeable to those defendants that one or more of their tires might fail, injuring a North Carolina

resident, and the defendants might have to defend a lawsuit here.

This court held in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, that a manufacturer or distributor who places an item in the stream of commerce, even indirectly, while attempting to serve a market, it is subject to suit in that market.

> If the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

World-Wide Volkswagen at 297-98.

Overall, the test is this: whether "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Id.* at 297.

In this case, the very tire at issue, although sold in France, was designed and manufactured by the defendants so that it could be sold in the United States.

Robert C. Ochs is a registered professional engineer with 25 years of experience working in the tire industry, including the European tire industry. He worked for Michelin Tire in France in a number of positions, including Director of Product Analysis. Mr. Ochs traveled to France and personally examined the tire involved in this wreck. He stated in his affidavit that the tire involved in this wreck was designed, manufactured and marketed for sale worldwide, including sale in the United States and North Carolina. Pet. App. 24a.

He noted that the information on the tire was written entirely in English and it contained a serial number required by the U.S. Department of Transportation for tires sold in the United States. *Id.* The tire contained additional U.S. Department of Transportation markings that were placed there to allow the tire to be sold in the United States. *Id.*

Markings on the tire at issue contained information showing that it was manufactured as qualified for sale in the United States, Mr. Ochs stated. The tire also has a U.S. code listing load and pressure ratings that conform to United States standards set by the Tire and Rim Association, the standardizing organization for the tire industry in the United States. *Id.* It contains a "Safety Warning," written in English, that conforms to the warnings found on every tire for sale in the United States. *Id.* The tire was manufactured and labeled in such a way as to allow it to be sold in the United States, including North Carolina, he concluded. *Id.*

Not only could the defendants reasonably anticipate being haled into court in North Carolina for the sale of one of their tires – they could have been haled into court in North Carolina for the sale of this very tire, were it not for a happenstance of distribution which sent the tire to France instead of North Carolina. Therefore the source and connection of the cause of action to the contacts is very strong.

d. Interest of the forum state. Protection of children is part of the public policy of North Carolina. In this case, two 13-year-old North Carolina residents were killed when a tire manufactured by defendants failed, causing the bus they were riding in to crash. North Carolina has an interest in protecting its citizens – especially its minor citizens who cannot protect themselves – and allowing them a forum for the redress of grievances. As the N.C. Supreme Court stated: "It is generally conceded that a state has a 'manifest interest' in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors." *Tom Togs, Inc. v. Ben Elias Industries Corp.*, 318 N.C. 361, 367, 348 S.E.2d 782, 787 (1986).

e. Convenience. The Court of Appeals found that the convenience factor favors the plaintiffs. It stated that:

> Requiring Plaintiffs, who have no ties to France, to litigate their claims in the French courts would impose a considerable burden on them. Although there is no question but that requiring Defendants to defend an action in the General Court of Justice would be

> burdensome as well, that burden is alleviated to some extent by the fact that Defendants have corporate affiliates in the United States with business interests in North Carolina, a fact which is simply not true of Plaintiffs.

Pet. App. 26a-27a.

The foreign subsidiaries of Goodyear are represented by the same counsel representing the U.S. Goodyear defendants, so there is little inconvenience involved for the defendants.

In sum, the trial court weighed all of the five factors to determine whether allowing jurisdiction would comport with traditional notions of fair play and substantial justice and found that all five favored the plaintiffs.

IV. The N.C. Court Of Appeals' *Dicta* References To Stream Of Commerce Are Not Dispositive.

In the lower court decision, the N.C. Court of Appeals in *dicta* does discuss the stream of commerce theory in relation to the case. However, the court made clear that it was not adopting that analysis in its ruling but was determining the case based upon the defendants' extensive business presence in North Carolina markets.

Although the N.C. Court of Appeals discusses the question of whether that theory can be used to support jurisdiction in a general jurisdiction case, the court ultimately did not adopt such a theory, but instead based

its decision on well settled notions of minimum contacts sufficient to allow general jurisdiction.

Specifically, the Court ultimately bypassed that matter and focused on the proper issue: "Instead of adopting a general rule precluding the use of stream of commerce analysis to support a finding of general personal jurisdiction, we believe that the real issue is the extent to which Defendants' products were, in fact, distributed in North Carolina markets." Pet. App. 28a.

This is consistent with a constitutionally appropriate general jurisdiction analysis, in which the quantity and quality of the contacts are analyzed, instead of permitting a single instance of placing an item into the stream of commerce to potentially be enough for jurisdiction to attach.

Further, the court stated that had only a small number of tires been sold in North Carolina, it might be inclined to agree with the defendants – an indication that the court was not applying a stream of commerce theory but again is conducting a proper constitutional analysis.

The court said: "Although we might agree with Defendants' contention in the event that the record demonstrated that only a few tires reached North Carolina through a limited distribution process, that is not the situation here. Instead, the trial court's findings reflect that thousands of tires manufactured by each of the Defendants were distributed in North Carolina as the result of a highly organized distribution process that involved Defendants and other Goodyear affiliates. Thus,

we believe that, on the facts of this case, sufficient basis exists to support a finding of general personal jurisdiction under N.C. Gen. Stat. § 1-75.4(1)d and the due process clause." Pet. App. 28a.

In essence, the North Carolina courts decided that if these foreign defendants are deliberately shipping thousands of tires into North Carolina for sale, they might reasonably expect to be haled into court in North Carolina when a tire designed for the U.S. market fails, and North Carolina residents are killed. And if, through their exploitation of the North Carolina tire market, they could reasonably expect to be haled into court in North Carolina for the death or injury to a North Carolinian because of a faulty tire, it was not unreasonable to allow jurisdiction for two North Carolinians killed by a faulty tire that was designed and manufactured so that it could be sold in the U.S. market.

Consider, to use a contemporary example, a Chinese company sending thousands of dangerous toys into North Carolina and other U.S. states. A child from North Carolina, while traveling in Canada, is injured by a toy from this company, but the toy was purchased in Canada. Once the child returns home to North Carolina, why shouldn't the plaintiffs be able to file suit on the child's behalf in North Carolina, instead of going to the expense of attempting to litigate long distance in Canada or China? The Chinese company was deliberately taking advantage of the North Carolina market, and could reasonably expect be haled into court in North Carolina because of the dangerous toys it was selling here. The fact that the toy was actually sold somewhere else does not affect that Chinese company's expectation that it could be sued in North Carolina for these defective toys.

Ultimately, the analysis is one of fundamental fairness. There must be sufficient minimum contacts between the nonresident defendant and our state "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

In this case, a wholly owned subsidiary of a U.S. company on a continuous and systematic basis manufactured a particular product – tires – which was sold by the thousands in North Carolina as part of a the company's world-wide marketing and distribution effort. Fair play and substantial justice are not offended by allowing those companies to be haled into court in the state when one of those same products proves fatally defective.

SUMMARY

Plaintiffs are not asserting there are minimum contacts with defendants under a "stream of commerce" theory. Instead, plaintiffs allege and the court found that that the defendants are part of a highly targeted, integrated world-wide effort to design, manufacture, market and sell their tires in North Carolina. Those thousands of tires sold in North Carolina are not incidental contacts, but instead are calculated and deliberate efforts to take advantage of the North Carolina market.

Ultimately, based on its findings of fact, the trial court performed a constitutionally proper analysis of the evidence and concluded as a matter of law as follows:

> 1. The defendants have continuous and systematic ties with the State of North Carolina.
>
> 2. The defendants' activities in North Carolina are substantial.
>
> 3. The quantity of the defendants' contacts with North Carolina; the nature and quality of those contacts; the source and connection of the cause of action to the contacts; the interest of North Carolina in this cause of action and the convenience of the parties, all weigh in favor of the exercise of general jurisdiction over the defendants.
>
> 4. Exercise of general jurisdiction over the defendants comports with Due Process and does not offend traditional notions of fair play and justice.

Pet. App. 35a-36a.

Whether the trial court was correct depends on the evidence it examined and the specific facts it found. But the trial court applied the proper tests to determine whether the exercise of jurisdiction would comport with Due Process. Its ruling does not raise any contested issues regarding constitutional interpretation. Nor does it raise any compelling reason for this court to review that decision.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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REPLY BRIEF

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IN THE

Supreme Court of the United States

GOODYEAR LUXEMBOURG TIRES, SA,
GOODYEAR LASTIKLERI T.A.S., AND
GOODYEAR DUNLOP TIRES FRANCE, SA,
Petitioners,

v.

EDGAR D. BROWN AND PAMELA BROWN, CO-ADMINISTRATORS OF THE ESTATE OF JULIAN DAVID BROWN, AND KAREN M. HELMS, ADMINISTRATRIX OF THE ESTATE OF MATTHEW M. HELMS,
Respondents.

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SEPTEMBER 8, 2010

CORPORATE DISCLOSURE STATEMENT

The corporate disclosure statement included in the petition for a writ of certiorari, pursuant to Supreme Court Rule 29.6, remains accurate.

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REPLY BRIEF FOR PETITIONERS

The decision below subjected petitioner foreign manufacturers to general jurisdiction in North Carolina, on causes of action unrelated to any products distributed in the state, merely because some of their products reach North Carolina through the stream of commerce. As Respondents do not contest, this expansive application of general jurisdiction is contrary to the holdings of multiple federal courts of appeals and state supreme courts. It also goes far beyond the narrow limits this Court's cases have placed on general jurisdiction. And it gives rise to vast opportunities for forum shopping, deters interstate and international commerce, and jeopardizes important international relations interests of the United States.

Respondents do not seriously contest any of this. Instead, Respondents (1) argue that this Court should ignore the decision below and proceed as if reviewing the (purportedly more defensible) analysis of the trial court; (2) half-heartedly suggest that the stream of commerce analysis below was *dicta*; and (3) contend that a foreign manufacturer *should* be broadly subject to suit based on the distribution of products through the stream of commerce.

None of these arguments detracts from the pressing need for review by this Court. Indeed, Respondents' attempt to divert attention from the decision below is a telling concession that that decision departs drastically from the decisions of this Court and those of the other courts to address the issue. That decision unequivocally held that Petitioners despite taking no "affirmative action to cause tires which they had manufactured to be

shipped into North Carolina," Pet. App. 22a were subject to general jurisdiction in the state, on any cause of action whatsoever, based on the injection of their tires into the stream of commerce. *Id.* at 29a. Regardless of how the state trial court analyzed the issue and it was not meaningfully different the North Carolina Court of Appeals' unequivocal embrace of such a dangerously expansive rule of general jurisdiction, in conflict with multiple other courts, urgently requires this Court's intervention and correction.

A. Respondents' Failure To Defend The Decision Below Serves Only To Highlight The Need For Review And Correction Of That Decision

The North Carolina Court of Appeals held that general jurisdiction over Petitioners in North Carolina was proper in a "dispute [that] is not related to, nor did it arise from, [Petitioners'] contacts with North Carolina," Pet. App. 12a based on Petitioners' "inject[ion of] their product into the stream of commerce." *Id.* at 29a. In contrast, the Third, Fifth, and Seventh Circuits, and the highest courts of Alabama, Kansas, and Texas, have uniformly held that mere injection of products into the stream of commerce cannot support an assertion of general jurisdiction. *See* Pet. at 9-11. Likewise, the expansive rule of general jurisdiction adopted below is inconsistent with both this Court's general jurisdiction precedents and its stream of commerce cases. *Id.* at 12-16.

Respondents do not seriously argue otherwise. They instead oppose certiorari on the ground that regardless of the basis on which the North Carolina

Court of Appeals decided the case "this case ultimately is an appeal of the trial court's order" and therefore "we should assess that order more closely." Opp. at 5. And they argue at length that "the *trial court* did not perform a stream of commerce analysis in concluding general personal jurisdiction was proper." *Id.* at 3 (emphasis added); *see also id.* at 6-15, 19.

This open refusal to defend the North Carolina Court of Appeals' stream of commerce holding speaks volumes about the magnitude of the error below and the decision's departure from the decisions of other courts. And Respondents' resort to the reasoning of the trial court does nothing to diminish the pressing need for this Court's review.

1. The relevant decision for purposes of this petition is, of course, the decision of the North Carolina Court of Appeals, not that of the trial court. This Court's exercise of its certiorari jurisdiction focuses on the conflict created by the decision from which certiorari is sought, not on the extent to which an underlying trial court decision creates such a conflict. *See* Sup. Ct. R. 10. This is as it should be, because it is the stream of commerce rule of general jurisdiction adopted by the Court of Appeals, not the trial court's analysis, that is now binding North Carolina law. *See, e.g.*, *State v. Adams*, 513 S.E.2d 588, 589 (N.C. Ct. App. 1999) (binding effect of North Carolina Court of Appeals decisions). The now-superseded opinion of the trial court does nothing to mitigate the problematic consequences of that ruling including the conflict with other jurisdictions, opportunities for forum shopping, deterrence of interstate and international commerce,

and effects on foreign relations and therefore nothing to mitigate the need for this Court's review.

2. In any event, even if the trial court order were relevant, Respondents' claim that "the trial court did not perform a stream of commerce analysis," Opp. at 3, is incorrect. The trial court may not have used the phrase "stream of commerce," but its analysis was wholly reliant on stream of commerce principles. "The stream of commerce refers . . . to the regular and anticipated flow of products from manufacture to distribution to retail sale," *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 117 (1987) (Brennan, J., concurring), which is precisely what the trial court referenced when reasoning that Petitioners "knew or should have known that some of [their] tires were distributed for sale to North Carolina residents." Pet. App. 33a; *see also id.* (stating that Petitioners "knew or should have known" that their tires "were shipped" into the U.S. market "and sold in North Carolina").

Moreover, what little there is in the trial court's order (or Respondents' arguments below) that might support a narrower ground of decision did not survive review. In particular, whereas Respondents repeatedly suggest that this is not a stream of commerce case because Petitioners "deliberately" caused the shipment of their tires into North Carolina, Opp. at 4, 10, 17, 18; *see* Pet. App. 34a, 35a, the Court of Appeals rejected any finding that Petitioners "caused" the shipment of their tires to North Carolina. *Id.* at 22a. The court made clear that only stream of commerce reasoning was available, because the record was "devoid of evidence that Defendants took any affirmative action to cause

tires which they had manufactured to be shipped into North Carolina." *Id.*

B. The Court Of Appeals' Unequivocal Stream Of Commerce Holding Cannot Be Dismissed As Dicta.

Respondents' attempt to dismiss the Court of Appeals' stream of commerce holding as dicta (Opp. at 15) is equally unavailing. The Court of Appeals expressly based its holding solely on its stream of commerce reasoning:

> [W]e conclude that the appropriate question that must be answered in order to determine whether Defendants are subject to the jurisdiction of the courts of this state is *whether Defendants have purposefully injected their product into the stream of commerce* without any indication that they desired to limit the area of distribution of their product so as to exclude North Carolina.

Pet. App. 20a (internal quotation marks and alterations omitted) (emphasis added). And, having thus framed its analysis, the court phrased its holding in precisely the same terms: "Defendants *purposefully injected their product into the stream of commerce* without any indication that they desired to limit the area of distribution of their product so as to exclude North Carolina," and therefore "the exercise of general personal jurisdiction over [them] was appropriate." *Id.* at 29a (internal quotation marks and alterations omitted) (emphasis added).

Moreover, as noted above, the court by expressly rejecting the trial court's finding that Petitioners "caused" the shipment of their tires into North

Carolina, *id.* at 22a made clear that Petitioners' contacts with North Carolina existed *solely* through the stream of commerce. In the face of this and similar language, including the Court of Appeals' extensive (if misguided) discussion of the stream of commerce doctrine, *id.* at 14a-20a, Respondents' claim that the stream of commerce reasoning below was dicta is untenable.

Particularly puzzling is Respondents' reliance on the court's holding that it refused to "adopt[] a general rule precluding the use of stream of commerce analysis to support a finding of general personal jurisdiction." Opp. at 16 (quoting Pet. App. 28a) (emphasis added). Far from indicating that the court below did *not* rely on stream of commerce principles, the quoted language actually expresses its *insistence* on "the use of stream of commerce analysis to support a finding of general personal jurisdiction" the precise point on which the decision below conflicts with the holdings of other jurisdictions and with this Court's cases. *Id.*

Likewise, the court's suggestion that it might find no general jurisdiction "had only a small number of tires been sold in North Carolina," Opp. at 16, does not support Respondents' argument the court "was not applying a stream of commerce theory," *id.* Quite the contrary: This statement expressly indicates that the existence of general jurisdiction turns on the extent of the products reaching North Carolina through the stream of commerce.

Finally, Respondents imply that the decision below was not based on general jurisdiction, because general jurisdiction involves a claim "completely unrelated to the source of the contacts." Opp. at 11.

Petitioners suggest that the claim here arising from a tire that was sold in France by a "happenstance of distribution," *id.* at 14 was properly deemed "related" to Petitioners' tires that reached North Carolina through the stream of commerce. *See id.* at 11 (there "is a very significant nexus between the contacts with North Carolina and the cause of action"). The short answer to this recharacterization of the decision below is that the Court of Appeals expressly disclaimed it. The court explicitly stated that "[t]he present dispute is *not related to*, nor did it arise from, Defendants' contacts with North Carolina," Pet. App. 12a (emphasis added), and it repeatedly stated that it *was* applying general jurisdiction. *E.g.*, *id.* at 13a ("[T]he issue raised in this case involves general rather than specific jurisdiction."), 27a, 28a, 29a.

In sum, the decision below unequivocally held, in conflict with multiple other courts, that Petitioners' placement of their products in the stream of commerce was sufficient to subject them to general jurisdiction in North Carolina. There is a pressing need for this Court to review and correct that erroneous holding.

C. The Court Of Appeals' Decision Is Wrong And Should Be Reversed.

The holding below, that a manufacturer's mere placement of its products in the stream of commerce can support a downstream state's assertion of general jurisdiction over that manufacturer, is insupportable under this Court's decisions. *See* Pet. at 12-16. Respondents make no attempt to defend this holding. Instead, they offer a novel theory of quasi-general jurisdiction, arguing that because Petitioners

allegedly could "reasonably anticipate being haled into court in North Carolina for the sale of one of their tires" that reached the state through the stream of commerce, they likewise must reasonably anticipate being haled into North Carolina for the sale of any tire, anywhere in the world, that *could have been* (but was not) distributed in North Carolina. Opp. at 14; *see also id.* at 17.

Leaving aside that this is not what the court below held the court addressed general jurisdiction over *any* cause of action, not just those related to tires it is contrary to longstanding and well-established case law. As demonstrated in the Petition (at 15-16), under this Court's stream of commerce cases, a manufacturer's placement of products in the stream of commerce can justify jurisdiction in a downstream state only over claims *resulting from the distribution of the product in that state. See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (downstream state's assertion of jurisdiction is "not unreasonable" if the "allegedly defective merchandise *has there been the source of injury*") (emphasis added).

In short, neither this Court's general jurisdiction cases nor the stream of commerce doctrine countenance either the unprecedented decision below or Respondents' equally unprecedented variation.

CONCLUSION

The petition should be granted.

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AMICUS CURIAE BRIEF

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In the Supreme Court of the United States

GOODYEAR LUXEMBOURG TIRES, S.A., *ET AL.*,
PETITIONERS
v.
EDGAR D. BROWN, *ET AL.*,
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE NORTH CAROLINA COURT OF APPEALS

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Under federal due process standards, can *general* personal jurisdiction properly be exercised on the sole ground that the forum State could have exercised *specific* jurisdiction in a different, hypothetical case involving the same corporate defendant?

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

Pursuant to Rule 37.2(b), the Chamber of Commerce of the United States of America respectfully moves for leave to file the attached *amicus* brief in support of petitioners. Petitioners have consented to the filing of the brief. Respondents have not responded to a request for consent.

As we explain more fully in the brief, the nature of the Chamber's interest is as the world's largest business federation, representing member companies of every size, from every industry, in every region of the United States. As such, the Chamber is concerned that the decision below will work an unwarranted and ill-advised revolution in the law of personal jurisdiction to the detriment of businesses, and ultimately consumers, nationwide. The law of personal jurisdiction lies at the foundation of all litigation; and the decision below threatens to demolish the most well-established principle in the law of personal jurisdiction. Thus, it makes sense to allow the leading representative of businesses in the United States to explain why this change is not only unlawful, but harmful to the business community.

This brief is offered for filing within 30 days of docketing, and therefore is timely under Rule 37.2(a). Moreover, although respondents did not receive the full ten days' notice of the Chamber's intent to file before respondents were originally due to file their response (see *infra* note 1), that failure did not prejudice them. To the contrary, on July 30, 2010 before the date on which notice should have been provided (August 3) respondents sought an extension of time to file their response to the petition, a request that this Court granted on August 5. Res-

pondents' opposition is now due on September 13. Accordingly, respondents will have a full month to respond, not only to the petition, but to this brief.

For all of these reasons, this motion should be granted, and the Chamber should be permitted to file the attached brief.

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*[1]

No issue is more basic to determining a company's litigation risk than where it can be sued. The more forums where a business can be haled into court, the less the business can predict what law will apply, and therefore what conduct may lead to liability.

Unfortunately, for nearly 25 years, the lower courts have been in a state of upheaval over whether a company is subject to a State's jurisdiction simply because the "stream of commerce" carried the company's products into the state and a cause of action arose involving those products. But amidst the confusion, one bedrock principle stood firm: the distinction between specific and general jurisdiction. That is, whatever "minimum contacts" were required to subject a company to suits arising out of specific contacts with a forum State, businesses knew they could not be haled into court for *all* purposes unless they conducted "continuous corporate operations" there. *Perkins* v. *Benguet Consol. Mining Co.*, 342 U.S. 437, 446 (1951) (quoting *Int'l Shoe Co.* v. *Washington*, 326 U.S. 310, 318-319 (1945)).

The decision below warrants this Court's review because it threatens to obliterate that fundamental distinction. In what can only be described as a re-

[1] Counsel for petitioner has consented to the filing of this brief, and the letter is on file with the Clerk. Counsel for respondents has not responded to a request for consent. Notice to the parties was provided seven days before filing, rather than the ten days required under Rule 37.2. No counsel for any party has authored this brief in whole or in part, and no person or entity, other than *amicus*, has made a monetary contribution to its preparation or submission.

markable power-grab, the court below subjected petitioners, European corporations, to general jurisdiction in North Carolina for alleged injuries incurred in Europe and based on a product concededly sold only in Europe. And what is the connection between petitioners and North Carolina? Just this: the distribution by petitioners' corporate affiliate of a limited number of *different* products, unrelated to respondents' alleged injury. Because the stream of commerce swept those *unrelated* products into North Carolina, the court below held, petitioners can now be haled into court in North Carolina on *any* cause of action, arising *anywhere* in the world, related to *any* of petitioner's products.

Not only does this mistaken decision set up a split with every other court to have considered this issue (as petitioner has shown), it holds grave ramifications for business. After all, "[t]he Due Process Clause, by ensuring the orderly administration of the laws, gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980). So much for that. The decision below renders it next to impossible for defendants to structure their conduct to prevent liability from suit. Now, whether a company is large or small, if its products are distributed in North Carolina, that will be the company's "home state" for litigation purposes. The toll on the corporate economy of this jurisprudential misadventure promises to be substantial.

But the decision below does more than attack the corporate economy: It assaults federalism and federal supremacy as well. As this Court has recognized,

"restrictions on the personal jurisdiction of state courts" "are more than a guarantee of immunity from inconvenient or distant litigation"; "[t]hey are a consequence of territorial limitations on the power of the respective States." *Hanson* v. *Denckla*, 357 U.S. 235, 251 (1958). The decision below ignores this principle, extending the long arm of North Carolina's courts around the globe. Under the decision below, it does not matter whether a business conducts "continuous corporate operations" in Chapel Hill, in California, or in China it can be haled into court in North Carolina for any reason so long as some of its products are distributed by others in North Carolina. This Court, however, has "never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could [it], and remain faithful to the principles of interstate federalism embodied in the Constitution." *World-Wide Volkswagen*, 444 U.S. at 293. Nor has the Court allowed States to trump "the Federal Government's interest in its foreign relations policies." *Asahi Metal Indus. Co., Ltd.* v. *Super. Ct.*, 480 U.S. 102, 103 (1987).

As we will explain, that is exactly what the decision below does with the foreseeable result of retaliation from foreign governments and forum-shopping by foreign plaintiffs. This Court's review is urgently needed to address this split-creating, breathtakingly broad decision. Indeed, the lower court's rewriting of settled personal jurisdiction law is a prime candidate for summary reversal.

As the world's largest business federation, representing 300,000 direct members and indirectly representing the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region

of the country, the Chamber of Commerce of the United States of America is profoundly interested in this crucial case. One of the Chamber's important functions is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus* briefs in cases of vital concern to the Nation's business community. The Chamber is well situated to brief the Court on the importance of the issues presented in the petition to the many businesses now exposed to all types of suits in North Carolina merely because some of their products were distributed in the State.

STATEMENT OF THE CASE

This case involves the North Carolina courts' exercise of personal jurisdiction over petitioners, three European corporations. Pet. 2a. Those corporations Goodyear Luxembourg Tires SA ("Goodyear Luxembourg"), Goodyear Lastikleri T.A.Ş. ("Goodyear Turkey"), and Goodyear Dunlop Tires France SA ("Goodyear France") were sued for the alleged failure of a tire in a fatal accident outside Paris, France. *Ibid.* The tire that allegedly failed was manufactured by Goodyear Turkey and was never shipped into the United States. Pet. 4-5 & n.2, 2a. Moreover, the record was "devoid of evidence that Defendants took any affirmative action to cause tires which they had manufactured to be shipped into North Carolina." Pet. 22a.

Nevertheless, the Superior Court of Onslow County, North Carolina, asserted *general* personal jurisdiction over all three European corporations because they manufactured *other* tires that their *affiliates* distributed into North Carolina. The North Carolina

Court of Appeals affirmed, acknowledging that "[t]he present dispute is not related to, nor did it arise from, Defendants' contacts with North Carolina. As a result, the issue raised in this case involves general rather than specific jurisdiction." Pet. 12a-13a. Thus, the court said, the "relevant question * * * is whether Defendants' activities in the forum are sufficiently continuous and systematic[.]" Pet. 13a.

But then, attempting to apply this classic test for general jurisdiction, the Court turned at length to this Court's *specific* jurisdiction cases and announced the following rule of decision: "[W]e conclude that the appropriate question that must be answered * * * is whether Defendants * * * have purposefully injected [their] product into the stream of commerce without any indication that [they] desired to limit the area of distribution of [their] product so as to exclude North Carolina." Pet. 20a; see *id.* at 14a-16a (discussing, *inter alia*, *World-Wide Volkswagen* and *Asahi*).

To avoid precisely this conclusion, the European corporations had explained that, under federal law, "'stream of commerce' analysis simply does not apply in instances involving general, as compared to specific, jurisdiction." Pet. 28a. But the Court of Appeals responded that petitioners "have not cited a North Carolina case to this effect, and we know of none." *Ibid.* "Instead of adopting a general rule precluding the use of stream of commerce analysis to support a finding of general personal jurisdiction," the court declared, "*we believe that the real issue is the extent to which Defendants' products were, in fact, distributed in North Carolina markets.*" *Ibid.* (emphasis added). In other words, the Court of Appeals held, the "real issue" in general jurisdiction cases is whether defen-

dants' contacts meet the "stream of commerce" standard for *specific* jurisdiction.

The Supreme Court of North Carolina declined discretionary review. Pet. 38a. The European corporations' petition followed.

REASONS FOR GRANTING THE PETITION

The decision below single-handedly erases the law's fundamental distinction between general and specific jurisdiction. This was a profound mistake requiring this Court's immediate attention and not only because, as petitioner showed, the court below created a split of authorities. As we show in Part I, by opening corporations to all-purpose jurisdiction when they have no contacts with the forum State, the decision below will deprive corporations of the "fair and orderly administration of the laws which it was the purpose of the due process clause to ensure." *Perkins*, 342 U.S. at 447. And as we show in Part II, the decision below will prevent the Due Process Clause, in the vast majority of cases, from protecting the jurisdictions of the several States by "acting as an instrument of interstate federalism." *World-Wide Volkswagen*, 444 U.S. at 294. At the same time, the decision will undermine *federal* control over foreign relations.

I. The decision below threatens to upset settled due process principles and precedent requiring that companies be allowed to decide where to establish the kind of contacts that subject them to general jurisdiction.

For more than a century, the Due Process Clause of the Fourteenth Amendment has "limit[ed] the power of a State to assert *in personam* jurisdiction

over a nonresident defendant." *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 413-414 (1984) (citing *Pennoyer* v. *Neff*, 95 U.S. 714 (1878)). "By requiring that individuals have fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign, the Due Process Clause gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 472 (1985) (citations omitted).

1. What constitutes "fair warning," in turn, depends on whether a court exercises specific or general jurisdiction. "Where a forum seeks to assert *specific* jurisdiction over an out-of-state defendant * * * this 'fair warning' requirement is satisfied if the defendant has purposefully directed his activities at residents of the forum, and the litigation results from alleged injuries that arise out of or relate to those activities." *Id.* at 472 (footnote and internal citations omitted; emphasis added). By contrast, "[w]hen a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendants' contacts with the forum, the State has been said to be exercising '*general* jurisdiction'" for which fair warning requires "continuous and systematic general business contacts" such as "maintain[ing] an office in [the forum State]," "ke[eping] company files" there, and "h[olding] directors' meetings" there. *Helicopteros*, 466 U.S. at 415, 416 & n.9 (citing *Perkins*, 342 U.S. at 438, 445) (emphasis added).

Lower courts have come to rely heavily on these principles which companies invoke with great fre-

quency. "This general-specific jurisdiction distinction is an extremely significant one," explains the leading federal practice treatise, "because in order to assert general jurisdiction over an out-of-state defendant, there must be substantial forum related activity on the part of the defendant." 4 Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 1067.5 (3d ed. 2002) (citing cases across the circuits). Moreover, "the threshold for satisfying the requirements for general jurisdiction before considering convenience or more general fairness concerns is substantially higher than in specific jurisdiction cases." *Ibid.* "Perhaps because of the higher level of contacts required," another leading treatise declares, "the Supreme Court has upheld general jurisdiction only once [in *Perkins*], and lower courts have evinced a reluctance to assert general jurisdiction over nonresident individual defendants or foreign corporations even when the contacts with the forum State are quite extensive." 16 James W. Moore, Moore's Federal Practice § 108.41 (Matthew Bender 3d ed.) (citing cases across the circuits).

The court below, however, ignored these hornbook principles and held that general jurisdiction could be established by meeting the test for specific jurisdiction. With this categorical error, the court took away the right of companies whose products are distributed in North Carolina to any "fair warning" as to when they might be subject to suits of any kind thus depriving them of due process.

2. If anything is clear from this Court's general jurisdiction decisions, it is that a corporation may *not* reasonably expect to be haled into court *for all purposes* anywhere the stream of commerce may sweep its products. To the contrary, general jurisdiction re-

quires an actual physical presence in the State and not a sporadic one.

As noted above, this Court has found general jurisdiction to exist exactly once where the president of the company at issue "returned to his home" in the forum State, set up an office, employed two secretaries, established company bank accounts, and "carried on * * * a *continuous and systematic supervision* of the * * * activities of the company." *Perkins*, 342 U.S. at 447-448 (emphasis added). The "essence of the issue" at stake, this Court explained, was "one of general fairness to the corporation." *Id.* at 445. And under these circumstances, it was both "reasonable and just" to subject the corporation to the jurisdiction of the State, even for dealings distinct from its activities there, because it conducted in the State "continuous corporate operations." *Id.* at 445-446 (quoting *Int'l Shoe*, 326 U.S. at 318-319).

The terms "activities" and "operations" which first appeared in *International Shoe* (326 U.S. at 316, 318) reveal the kind of active participation in the economy that is required to establish general jurisdiction. And both terms connote extended physical "presence in the state." *Id.* at 318. That is why *Perkins* found that setting up a managing office in the State was sufficient to establish general jurisdiction, and it is why *Helicopteros* required "the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*." 466 U.S. at 416 & n.9 (finding no general jurisdiction where contract forming the relationship giving rise to the tort suit at issue was negotiated in forum State); see also *Johnston* v. *Multidata Sys. Int'l Corp.*, 523 F.3d 602, 611 (5th Cir. 2008) (to confer general jurisdiction, defendant must have a business presence in forum, not

merely do business with forum); Mary Twitchell, *The Myth of General Jurisdiction*, 101 Harv. L. Rev. 610, 635 (1988) (the "traditional indicia" of general jurisdiction are "a home base, an agent for the service of process, a local office, or the pursuance of a business from a tangible locale within the state"); Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1141-1142 (1966) ("From the beginning in American practice, general adjudicatory jurisdiction over corporations * * * could be exercised by the community with which the legal person had its closest and most continuing legal and factual connections. The community that chartered the corporation and in which it has its head office occupies a position somewhat analogous to that of the community of a natural person's domicile and habitual residence.").

3. As this history confirms, the mere fact that a company's *products* are eventually distributed in a forum State does not come close to justifying general jurisdiction. Such contacts do not amount to physical presence in the State much less "the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*." *Helicopteros*, 466 U.S. at 416 & n.9. And this makes sense. As a matter of "general fairness to * * * corporation[s]," it is neither "reasonable [nor] just" to subject corporations to the jurisdiction of a State for *all* purposes merely because some of their products were distributed in the State. *Perkins*, 342 U.S. at 445.

Here, lacking direct contacts of any kind with North Carolina, companies such as Goodyear Turkey, Goodyear Luxembourg, and Goodyear France will now be treated as if they were full-fledged Tar Heels and hence subject to suit on any cause of action

arising anywhere in the world. Because due process requires a "degree of predictability" to "allow[] potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit" (*World-Wide Volkswagen*, 444 U.S. at 297) the result below is patently unreasonable, and calls out for review, if not summary reversal.

4. The unreasonableness of the decision below is especially clear given that the "primary conduct" at issue here was manufacturing tires that were *not* involved in the underlying accident, but which were distributed by a corporate affiliate into North Carolina. Perhaps under the "stream of commerce-only" plurality opinion in *Asahi*, such conduct might have led to a lawsuit arising out of the distribution of tires into North Carolina. See *Asahi*, 480 U.S. at 119-120. But even under that opinion, stream-of-commerce distribution of *one* product into a State does not allow petitioners reasonably to anticipate being sued on causes of action arising out of *another* product that was never sold in the State. To the contrary, petitioners here structured their primary conduct to avoid lawsuits in North Carolina: they did not sell the tires at issue there. But under the decision below, apparently the only way to avoid being sued in North Carolina on causes of action arising from European tires was to attempt to prevent mere *distribution* of *any* tires in North Carolina. That makes no economic sense.

The decision below, moreover, does not enable petitioners to predict what other lawsuits *unrelated to tires* may now be brought in North Carolina. General jurisdiction is just that general. Thus, Goodyear Turkey can now be sued in North Carolina on con-

tracts, say, with parts manufacturers in Taiwan. And Goodyear France, to take another example, can be sued in North Carolina for tortious interference with business relations of a firm in Dubai. The possibilities are endless.

5. Further, nothing in the analysis of the court below limits it to large public companies. Indeed, the court's explicit reliance on a minuscule percentage of tires flowing into North Carolina (thousands out of some 90 million; see Pet. 4-5 & n.2, 2a) will have the perverse effect of subjecting many small businesses to jurisdiction in North Carolina.

Consider, for example, a firm of 50 employees making precision tools in Washington State. If that corporation distributes some products in North Carolina, it too can be subjected to all lawsuits in North Carolina on torts, contracts, whatever all unrelated to those products. It is both unreasonable and unfair to expect corporations to bear these burdens. That is, it is a violation of due process and a violation that demands review by this Court, as it has implications for thousands if not millions of businesses nationwide. *Perkins*, 342 U.S. at 445 ("The essence of the issue here, at the constitutional level, is * * * one of general fairness to the corporation.").

* * * * *

As this Court's cases make abundantly clear, and as the lower courts until now have fully understood, subjecting a corporation to general jurisdiction is fair only if its "continuous and systematic operations" include, as in *Perkins*, a physical "presence in the State." *Int'l Shoe*, 326 U.S. at 318; *Helicopteros*, 466 U.S. at 416. This Court should grant the petition to prevent the inequities threatened by the North Caro-

lina courts' conclusion that *general* jurisdiction turns on "the extent to which Defendants' products were, in fact, distributed" generally in the forum State's markets. Pet. 28a.

II. The decision below undermines principles of federalism and federal supremacy in the conduct of foreign relations.

The Court should grant the petition for two further reasons. *First*, the decision below threatens to render North Carolina the "courtroom to the world" a result contrary to settled principles of federalism. *Second*, by reaching so far to exercise jurisdiction over three European corporations having no contacts with North Carolina, the decision will tend to confuse and stoke the frustration of foreign corporations which in turn will undermine the federal government's role of speaking with one voice for the United States.

1. As we have shown, North Carolina has arrogated to itself a very broad power to summon into court corporations from around the globe, on any cause of action arising anywhere, simply because a corporate *affiliate* sold *unrelated* products into the State. In our federal system, a State cannot do that. Time and again, this Court has emphasized that limits on personal jurisdiction "act[] to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-wide Volkswagen*, 444 U.S. at 291-292. Conversely, the Court has "never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could [it], and remain faithful to the principles of in-

terstate federalism embodied in the Constitution." *Id.* at 293.

To be sure, this Court has noted that, as "technological progress has increased the flow of commerce between States, the need for jurisdiction over nonresidents has undergone a similar increase." *Hanson*, 357 U.S. at 250-251. Moreover, "progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome." *Id.* at 251. And "[i]n response to these changes, the requirements for personal jurisdiction have evolved * * * to the flexible standard of *International Shoe*." *Ibid.*

At the same time, however, "it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts." *Ibid.* After all, "[t]hose restrictions are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States." *Ibid.*; see also *World-Wide Volkswagen*, 444 U.S. at 294 (same). Thus, "[h]owever minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that State that are a prerequisite to its exercise of power over him." *Hanson*, 357 U.S. at 251.

And consider the alternative. In many cases, if distribution of a corporation's products in a State subjects that corporation to personal jurisdiction, "then the defense of personal jurisdiction, in the sense that a State has a geographically limited judicial power, would no longer exist. The [corporation] * * * would be subject to personal jurisdiction in every State."

ALS Scan, Inc. v. *Digital Serv. Consult., Inc.*, 293 F.3d 707, 713 (4th Cir. 2002) (declining to adopt a "structural arrangement in which each State has unlimited judicial power over every citizen in each other State who uses the Internet"). As "an instrument of interstate federalism," *World-Wide Volkswagen*, 444 U.S. at 294, the Due Process Clause prevents this obliteration of the defense of personal jurisdiction.

In short, by upholding general jurisdiction on a basis at once so insubstantial and easy to satisfy, the court below adopted a regime that will make the inquiry into personal jurisdiction unnecessary for a large class of defendants. This is not merely an affront to their due process rights, as shown above; it is an affront to the limitations that the Framers placed on the extraterritorial reach of individual States in our federal system limits that protect the States as a group from improper incursions by individual States.

2. By forcing non-U.S. corporations to submit to the general jurisdiction of one of the United States, the decision below also implicates "the procedural and substantive policies of other *nations*" in adjudicating the dispute at issue. *Asahi*, 480 U.S. at 115 (portion of opinion joined by eight Justices) (emphasis in original). Because the management of those sensitive interests is the province of the federal government not the States "[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field." *Ibid.* (citation and quotation omitted).

The Court of Appeals failed to show such "great care and reserve." To the contrary, without mentioning the ramifications of its decision for the United

States, the court below forced three European corporations Goodyear Turkey, Goodyear France, and Goodyear Luxembourg to litigate in Onslow County, North Carolina the design of tires never sent into North Carolina, based upon an accident in Paris, France. Such vast extraterritorial reach cannot help but encourage retaliation from foreign countries whose citizens are forced to submit to jurisdiction in North Carolina. *Cf. Helicopteros*, 466 U.S. at 425 n.3 (Brennan, J., dissenting) (noting Solicitor General's concern that broad interpretation of general jurisdiction would cause foreign companies to refrain from making purchases in the United States).

But the chief problem posed by the decision below may not be foreign offense; foreign corporations may now struggle even more with sheer confusion. As this Court has repeatedly said, the Nation "must speak with one voice when regulating commercial relations with foreign governments." *Michelin Tire Corp.* v. *Wages*, 423 U.S. 276, 285 (1976). Unfortunately, "the United States speaks with many inconsistent voices about the reach of United States judicial jurisdiction in international cases." Gary B. Born, *Reflections on Judicial Jurisdiction in International Cases*, 17 Ga. J. Int'l & Comp. L. 1, 11 (1987). Although this problem was identified more than two decades ago (see *ibid.*), the decision below proves that it has not been solved. Indeed, by subjecting foreign corporations to general jurisdiction based on mere "stream of commerce" distribution of products, the Court of Appeals' decision is likely the most discordant and confusing note to emerge from our federal system in some time.

* * * * *

Rather than exercising any restraint in the exercise of jurisdiction, the Court of Appeals extended its reach to three European corporations with no direct contacts with North Carolina. And it did so, not merely for this-case-only specific jurisdiction, but for all purposes from this day forward. By threatening to undermine U.S. foreign relations, that lack of restraint improperly trenches on federal prerogatives.

CONCLUSION

The decision below urgently demands review. The decision gets the extremely important law of personal jurisdiction flat wrong mistaking general jurisdiction for specific jurisdiction. And in so doing, the decision will inevitably produce doctrinal chaos, economic inefficiency and unfairness, and foreign relations problems. Accordingly, the petition should be granted and the decision below reversed, either summarily, or after full briefing and argument.

Respectfully submitted,

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AUGUST 2010

JOINT APPENDIX

Supreme Court, U.S.
FILED
NOV 12 2010
OFFICE OF THE CLERK

No. 10-76

IN THE

Supreme Court of the United States

GOODYEAR LUXEMBOURG TIRES, SA
GOODYEAR LASTIKLERI T.A.S., AND
GOODYEAR DUNLOP TIRES FRANCE, SA,

Petitioners,

v.

EDGAR D. BROWN AND PAMELA BROWN,
CO-ADMINISTRATORS OF THE ESTATE OF JULIAN DAVID
BROWN, AND KAREN M. HELMS, ADMINISTRATRIX OF
THE ESTATE OF MATTHEW M. HELMS,

Respondents.

On Writ of Certiorari to the North Carolina Court of Appeals

JOINT APPENDIX

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CERTIORARI GRANTED SEPTEMBER 28, 2010

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STATEMENT OF ORGANIZATION OF TRIAL COURT

At the December 10, 2007, Civil Session of Superior Court of Onslow County, the Honorable Gary E. Trawick, Judge Presiding, conducted a re-hearing of the Motions to Dismiss for Lack of Personal Jurisdiction of Defendants Goodyear Luxembourg Tires SA, Goodyear Lastikleri T.A.S., and Goodyear Dunlop Tires France SA. The hearing was held on December 10, 2007. From the Order filed on May 1, 2008, denying the Motions to Dismiss of Defendants Goodyear Luxembourg Tires SA, Goodyear Lastikleri T.A.S., and Goodyear Dunlop Tires France SA, said Defendants filed their written Notice of Appeal on May 12, 2008.

The Record on Appeal was filed in the Court of Appeals on August 8, 2008 and was docketed on August 26, 2008.

NORTH CAROLINA ONSLOW COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 05 CVS 1922
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS Plaintiffs, v. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA., Defendants.	**AFFIDAVIT OF SERVICE**

2007 MAY 17 PM 4:43
ONSLOW COUNTY, C.S.C.
BY

William B. Bystrynski, first being duly sworn, says:

1. That he is an attorney for the plaintiffs in the above-captioned case.

2. A copy of a Civil Summons and Complaint was translated and served on defendant, Goodyear Luxembourg Tires, SA, by serving Silvia Sitlen, as evidenced by the attached Affidavit of Celeste Ingalls.

3. Said Civil Summons and Complaint were, in fact, received by the defendant Goodyear Luxembourg Tires, SA, on December 9, 2006, as evidenced by the attached affidavit, translation and certificate.

4. A copy of the original certificate of service from the State Prosecutor General is also attached.

This the 16th day of May, 2007.

KIRBY & HOLT, L.L.P.

William B. Bystrynski
Attorney for Plaintiff
P.O. Box 31665
Raleigh, NC 27622
(919) 881-2111

Sworn to and subscribed before me this the 16th day of May, 2007.

NANCY C. BURNS
"NOTARY PUBLIC"
JOHNSTON COUNTY, NC
My Commission Expires 4-12-2012.

/s/ Nancy C. Burns
Notary Public
My Commission Expires: 4-12-2012

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **Affidavit of Service** in the above-captioned case on all parties to this cause by depositing a copy hereof, postage prepaid, in the United States mail, addressed to the attorney for defendants as follows:

Ronald C. Dilthey
Patterson Dilthey Clay
Bryson & Anderson L.L.P.
4020 WestChase Blvd., Suite 550
Raleigh, NC 27607

Dan J. McLamb
John T. Molleur
Yates, McLamb & Weyher, L.L.P.
P.O. Box 2889
Raleigh, NC 27602-2889

Charlot F. Wood
Bell, Davis & Pitt, P.A.
P. O. Box 21029
Winston-Salem, NC 27120-1029

This the 16th day of May, 2007.

/s/ William B. Bystrynski
William B. Bystrynski

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
ONSLOW COUNTY, NORTH CAROLINA

X

EDGAR D. BROWN, et al., Plaintiffs	Case No. 05 CVS 1922
v.	AFFIDAVIT OF CELESTE INGALLS
ERIC R. METER, et al, Defendants. X	

OREGON)
) ss.
County of Multnomah)

I declare that I, Celeste Ingalls, citizen of the United States, over the age of twenty-one, not a party to the issue in question, and having been duly sworn, depose and state the following:

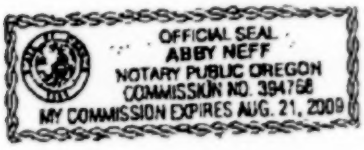
I am Director of Operations for Crowe Foreign Services, 1020 SW Taylor Street, Suite 240, Portland, Oregon, specializing in providing accurate translation of legal, judicial, extra-judicial and general documents from French into the English language.

I do hereby swear, under oath and penalty of perjury under the laws of the United States of America and the State of North Carolina, that the attached English translation (Exhibit 1) is a true and accurate translation of the original French proof of service documents (Exhibit 2) returned by the Luxembourg judicial authorities for the service upon

Goodyear Luxembourg Tires S.A. in the above captioned matter.

/s/ Celeste Ingalls

SUBSCRIBED AND SWORN to before me this 23rd day of Februarv, 2007.



/s/ Abby Neff
Notary Public for Oregon

SUMMARY OF THE DOCUMENT TO BE SERVED
ELEMENTS ESSENTIELS DE L'ACTE
Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965
Convention relative à la notification à l'étranger des actes judiciaires en matière civile ou commerciale, signée à La Hage, le 15 Novembre 1965.
(article 5, fourth paragraph)
(article 5, alinéa 4)

Name and address of the requesting authority: *Nom et adresse de l'autorité requérante:*	L. Celeste Ingalls Crowe Foreign Services 1020 SW Taylor Street, Suite 240 Portland, Oregon 97205
Particulars of the parties*: *Identité des parties:*	Edgar D. Brown, et al.....PLAINTIFFS Eric R. Meter, et al. .....DEFENDANTS Case No. 05 CVS 1922

JUDICIAL DOCUMENT**
ACTE JUDICIAIRE

Nature and purpose of the document:
Nature et objet de l'acte: To give notice to the defendant, Goodyear Luxembourg Tires, S.A., of the institution against it of a claim for civil damages and to summon it to answer the claim.

Nature and purpose of the proceedings, and, where appropriate, the amount in dispute:

Nature et objet de l'instance, le cas échéant, le montant du litige:

Civil claim for judgment alleging negligence and related actions. Plaintiff's allegations include, but are not limited to, claims that the accident which occurred on or about April 18, 2004 were the direct result of the Defendants' negligence in the design, manufacture, testing, and inspection of the Goodyear product involved with the aforementioned accident causing the deaths of plaintiffs' decedents. Plaintiff seeks judgment including, but not limited to, an amount to be determined, attorneys' fees and costs and of this action, lost earnings, and such other and further relief as the court deems just and proper.

Date and place for entering appearance:** N/A
Date et lieu de la comparution:

Court which has given judgment:** N/A
Juridiction qui a rendu la decision:

Date of judgment:** N/A
Date de la decision:
Time limits stated in the document:**
Indication des délias figurant dans l'acte:
Defendant is required to file an ANSWER with the Clerk of the Court, and serve a copy of same ANSWER upon Plaintiff's attorney, within thirty (30) days after having received the Summons and other documents herein.

EXTRAJUDICIAL DOCUMENT*
ACTE EXTRAJUDICIAIRE

Nature and purpose of the document: N/A

Nature et objet de l'acte.

Time limits stated in the document:** N/A
Indication des délias figurant dans l'acte.

*** If appropriate, identity and address of the person interested in the transmission of the document.**
S'il y a lieu, identité et adresse de la personne intéressée à la transmission de l'acte.

**** Delete if inappropriate.**
Rayer les mentions inutiles.

3929
CAMILLE FABER
COURT BAILIFF
60 GRAND-RUE PHONE 54 23 44-1
L - 1660 LUXEMBOURG FAX 54 54 54

CERTIFICATION OF DOCUMENT SERVICE

IN THE YEAR TWO THOUSAND SIX, ON DECEMBER NINETEEN,

UPON REQUEST FROM THE STATE PROSECUTOR GENERAL BEFORE THE SUPERIOR COURT OF JUSTICE OF THE GRAND DUCHY OF LUXEMBOURG,

ELECTING TO RESIDE IN HIS HEADQUARTERS AT L - 1450 LUXEMBOURG - 12, COTE D'EICH, AND ALSO IN THE COMMUNAL SECRETARIAT OF ANY PLACE OF SERVICE,

ACTING WITHIN THE FRAMEWORK OF THE CONVENTION CONCERNING SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS, SIGNED IN THE HAGUE ON NOVEMBER 15,1965,

I, THE UNDERSIGNED, CAMILLE FABER, COURT BAILIFF, RESIDING IN LUXEMBOURG, REGISTERED WITH THE DISTRICT COURT OF AND IN LUXEMBOURG, HAVE SERVED AND LEFT WITH

THE GOODYEAR LUXEMBOURG TIRES SA CORPORATION, ESTABLISHED AND WITH ITS HEADQUARTERS AT L - 7750 COLMAR-BERG - AVENUE GORDON SMITH,

A CIVIL SUMMONS, FILED WITH THE CLERK OF THE GENERAL COURT OF JUSTICE, SUPREME COURT DIVISION, OF THE STATE OF NORTH CAROLINA, ONSLOW COUNTY, BY EDGAR D. BROWN AND PAMELA BROWN, CO-ADMINISTRATORS OF THE ESTATE OF JULIAN DAVID BROWN, AND KAREN M. HELMS, ADMINISTRATRIX OF THE ESTATE OF MATTHEW M. HELMS, AS PLAINTIFFS, AGAINST THE PARTY BEING SERVED, AS DEFENDANT, AT THE PLACE, ON THE DAY, ON THE HOUR AND FOR THE PURPOSES MORE FULLY DESCRIBED IN SAID SUMMONS, ALL OF WHICH HAD BEEN TRANSLATED IN THE FRENCH LANGUAGE.

THIS DOCUMENT WAS DRAFTED FOR ITS INFORMATION, DIRECTION, AND TO BE USED AS LAWFULLY PERMITTED.

I, THE BAILIFF, HAVE LEFT A COPY OF THE DOCUMENT, WITH ALL RESERVATIONS. TOGETHER WITH ITS EXHIBITS, CONTAINING **FIFTY-THREE PAGES**, TO THE PARTY BEING SERVED, PRE QUALIFIED IN ACCORDANCE TO ARTICLE 155 OF THE NEW CODE OF CIVIL PROCEDURE.

COST
FIXED DUES 50.00

TRAVEL(S)			
V.A.T.	6.00		
ENRG.	12.00	COPY(IES)	12.50
STAMPS	6.00	V.A.T.	1.50
TOTAL	**74.00**	**TOTAL**	**88.00**

//Signature//

//Stamp//

//Seal//: OFFICE OF THE PROSECUTOR GENERAL SECRETARIAT

JAN 12, 2007

60 GRAND-RUE
L-1660
LUXEMBOURG

CAMILLE FABER
COURT BAILIFF

PHONE: (+352) 54 23 44-1
FAX: (+352) 54 54 54

A copy of the document transcribed above, named

was served on the date appearing above as follows[1] to

CERTIFICATION OF DOCUMENT SERVICE

GOODYEAR LUXEMBOURG TIRES SOCIETE ANONYME
AVENUE GORDON SMITH
L - 7750 COLMAR-BERG

at its headquarters / administrative center at

//Seal//: OFFICE OF THE PROSECUTOR GENERAL SECRETARIAT
JAN 12, 2007

Service was performed in accordance with Art. 155 par. 2 of the new C. of civ. proc., by handover of the copy to
(Last name) (First name) (Title)
as stated, who accepted it and certified that he/she was authorized to receive it.
Whereas the undersigned did not find on the premises any legal representative of the addressee, any agent of the latter, nor any other authorized person, service was performed in accordance with Art.

155 par. 5 of the new C. of civ. proc., by handover of the copy to

//Illegible//	Silvie	HR Director, residing at
(Last name)	(First name)	(Title)

//Illegible//
as stated, having the required age, who accepted it and provided the receipt below:
//Signature//
//Signature//
The copy was handed under seal, showing only the name, legal form and address of the addressee company and the seal of the court bailiff on the closure.
Another copy on plain paper with the notice provided in par. 5 of article 155 of the new C. of civ. proc. was left on the premises in a sealed envelope.

Whereas the document could not be served as provided in par. 2 to 5 of article 155 of the new C. of civ. proc. while(2)
No one was found on the premises
No legal representative of the addressee company, no agent of the latter, and no other person authorized for this purpose could be found on the premises and the persons that were present
have refused to accept a copy
have refused to acknowledge receipt
have refused to state their first name, last name, title and address

CERTIFICATE
ATTESTATION

PARQUET GENERAL
SECRETARIAT
12 JAN. 2007

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,
L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention,

(1) that the document has been served*
1. que la demande a été exécutée

the (date)
le (date) 19 décembre 2006
at (place, street, number)
à (localité, rue, numéro) au piege de la destinataire à Colomar-Berg, ave. Gordon Smith (G1) de Luxemboug

in one of the following methods authorized by article 5
X *dans une des formes suivantes prévues à l'article 5:*

☐ **(a) in accordance with the provisions of the sub-paragraph (a) of the first paragraph of article 5 of the Convention*.**
(a) selon les forms légales (article 5, alinéa premier, lettre a)

☐ **(b) in accordance with the following particular method*:**
(b) selon la forme particulière suivante:

☒ **(c) by delivery to the addressee, who accepted it voluntarily.***
(c) par remis simple

The documents referred to in the request have been delivered to:
Les documents mentionnés dans la demande ont été remis à:

(identity and description of person)

X *(identité et qualité de la personne)* Silvia SITLEN, HR director

relationship to the addressee (family, business or other):

lien de parenté, de subordination ou autres, avec le destinataire de l'acte: employee

2) that the document has not been served, by reason of the following facts*:

2. que la demande n'a pas été exécutée, en raison des faits suivants:

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement.*

Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint.

Annexes

Annexes

Documents returned:

Pièces renvoyées:

attestation de rescale les originals et prés[ILLEGIBLE]

Done at , the

Fait à Luxembourg , *le* 04 janvier

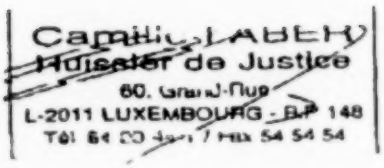
In appropriate cases, documents establishing the service:

Le cas échéant les documents justificatifs de

Signature and/or stamp.

Signature et/ou cachet.

l'execution



*** Delete if inappropriate.**
Rayer les mentions inutiles.

REQUEST
FOR SERVICE ABROAD OF JUDICIAL OR EXTRA JUDICIAL DOCUMENTS
DEMANDE
AUX FINS DE SIGNIFICATION OU DE NOTIFICATION A L'ETRANGER D'UN ACTE JUDICIARE OU EXTRAJUDICIAIRE
Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965
Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matierè civile

Identity and address of the applicant *Identité et adresse du requérant*	**Address of receiving authority** *Adresse de l'autorité destinataire*
L. Celeste Ingalls** Crowe Foreign Services 1020 SW Taylor Street, Suite 240 Portland, Oregon 97205, USA Email: Lci@foreignservices.com Facsimile No. 1-503-222-3950	Parquet General pres la Cour Supérieure de Justice 12, Cote d'Eich L-1450 Luxembourg Luxembourg Email: parquet.general@mj.etat.lu Tel: (352) 47 5981 1 Fax: (352)-470550

ou commerciale, signée à La Hage, le 15 Novembre 1965.

The undersigned applicant has the honour to transmit – in duplicate – the documents listed below

and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e., (identity and address)

Le requerant soussigné a l'honneur de faire parvenir – en double exemplaire – a l'autorité destinataire les documents ci-dessous énumérés en la priant conformément à l'article 5 de la Convention précitée, d'en faire remetire sans retard un exemplaire au destinataire, savior:
(identité et adresse)

Goodyear Luxembourg Tires, S.A.
Ave. Gordon Smith
L- 7750 Colmar-Berg, Luxembourg

☒ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention.*

a) selon les formes légales (article 5, alinéa premier, lettre a).

☐ (b) in accordance with the following particular method (sub paragraph (b) of the first paragraph of article 5)*.

b) selon la forme particulière suivante (article 5, alinéa premier, lettre b).

☐ (c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5)*.

c) le cas échéant, par remise simple (article 5, alinéa 2).

The authority is requested to return or to have returned to the applicant a copy of the document,– and of the annexes*.– with a certificate as provided on the reverse side.

Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte – et de ses annexes – avec l'attestation figurant au verso.

List of documents
Enumération des pièces

Done at Portland, Oregon, USA, the 30th day of Nov, 2006
Fait à Portland, Oregon, USA, le. . .

Executed "Request"
Executed "Summary"
*****Summons**
*****Amended Complaint**
Case No. 05 CVS 1922

Signature and/or stamp.
Signature et/ou cachet

/s/ L. Celeste Ingalls
L. Celeste Ingalls

*** Delete if inappropriate**
Rayer les mentions inutiles

**** Authorized applicant pursuant to Rule 4(c)(2) of the Federal Rules of Civil Procedure, Public Law 97-462**
***** with French translation**

[SEAL]

SUMMARY OF THE DOCUMENT TO BE SERVED
ELEMENTS ESSENTIELS DE L'ACTE

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965
Convention relative à la signification et à la notification à l'étranger des actes judiciaries et extrajudiciares en matière civile ou commerciale, signée à La Hage, le 15 Novembre 1965.
(article 5, fourth paragraph)
(article 5, alinéa 4)

Name and address of the requesting authority: *Nom et adresse de l'autorité requérante:*	L. Celeste Ingalls Crowe Foreign Services 1020 SW Taylor Street, Suite 240 Portland, Oregon 97205
Particulars of the parties*: *Identité des parties:*	Edgar D. Brown, et al.....PLAINTIFFS Eric R. Meter, et al. .....DEFENDANTS Case No. 05 CVS 1922

JUDICIAL DOCUMENT**
ACTE JUDICIAIRE

Nature and purpose of the document:
Nature et objet de l'acte: To give notice to the defendant, Goodyear Luxembourg Tires, S.A., of the institution against it of a claim for civil damages and to summon it to answer the claim.

Nature and purpose of the proceedings, and, where appropriate, the amount in dispute:
Nature et objet de l'instance, le cas échéant, le montant du litige:

Civil claim for judgment alleging negligence and related actions. Plaintiff's allegations include, but are not limited to, claims that the accident which occurred on or about April 18, 2004 were the direct result of the Defendants' negligence in the design, manufacture, testing, and inspection of the Goodyear product involved with the aforementioned accident causing the deaths of plaintiffs' decedents. Plaintiff seeks judgment including, but not limited to, an amount to be determined, attorneys' fees and costs and of this action, lost earnings, and such other and further relief as the court deems just and proper.

Date and place for entering appearance:** N/A
Date et lieu de la comparution:

Court which has given judgment:** N/A
Juridiction qui a rendu la decision:

Date of judgment:** N/A
Date de la decision:
Time limits stated in the document:**
Indication des délias figurant dans l'acte:

Defendant is required to file an ANSWER with the Clerk of the Court, and serve a copy of same ANSWER upon Plaintiff's attorney, within thirty (30) days after having received the Summons and other documents herein.

EXTRAJUDICIAL DOCUMENT*
ACTE EXTRAJUDICIAIRE

Nature and purpose of the document:
Nature et objet de l'acte:

N/A

Time limits stated in the document**:
Indication des délias figurant dans l'acte.

N/A

* If appropriate, identity and address of the person interested in the transmission of the document.
S'il y a lieu, et adresse de la personne intéressée à la transmission de l'acte.

** Delete if inappropriate.
Rayer les mentions inutiles.

CAMILLE FABER
HUISSIER DE JUSTICE
60, GRAND-RUE TEL 54 23 44-1
L- 1660 LUXEMBOURG FAX 54 54 54

ATTESTATION DE REMISE D'ACTE

L'AN DEUX MIL SIX, LE dix neuf DECEMBRE,

A LA REQUETE DE MONSIEUR LE PROCUREUR GENERAL D'ETAT PRES LA COUR SUPERIEURE DE JUSTICE DU GRAND-DUCHE DE LUXEMBOURG,

ELISANT DOMICILE EN SON PARQUET GENERAL A L - 1450 LUXEMBOURG - 12, COTE D'EICH, ET ENCORE AU SECRETARIAT COMMUNAL DE TOUT LIEU DE SIGNIFICATION,

AGISSANT DANS LE CADRE DE LA CONVENTION RELATIVE A LA SIGNIFICATION ET A LA NOTIFICATION A L'ETRANGER DES ACTES JUDICIAIRES OU EXTRAJUDICIAIRES EN MATIERE CIVILE OU COMMERCIALE, SIGNEE A LA HAYE LE 15 NOVEMBRE 1965,

JE SOUSSIGNE CAMILLE FABER, HUISSIER DE JUSTICE, DEMEURANT A LUXEMBOURG, IMMATRICULE PRES LE TRIBUNAL D'ARRONDISSEMENT DE ET A LUXEMBOURG, AI SIGNIFIE ET LAISSE A

LA SOCIETE ANONYME GOODYEAR LUXEMBOURG TIRES S.A., ETABLIE ET AYANT

SON SIEGE SOCIAL A L – 7750 COLMAR-BERG – AVENUE GORDON SMITH.

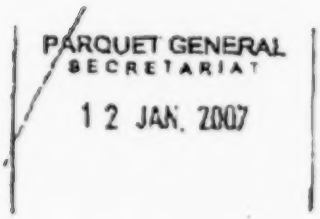
UNE CITATION A COMPARAITRE DANS UNE ACTION CIVILE DEPOSEE AU GREFFE DE LA COUR DE JUSTICE GENERALE, DIVISION DE LA COUR SUPREME, DE L'ETAT DE CAROLINE DU NORD, COMTE DE ONSLOW, PAR EDGAR D. BROWN ET PAMELA BROWN, CO-CURATEURS DE LA SUCCESSION DE JULIAN DAVID BROWN, ET KAREN M. HELMS, CURATRICE DE LA SUCCESSION DE MATTHEW M. HELMS, COMME PARTIES DEMANDERESSES, CONTRE LA PARTIE SIGNIFIEE, COMME DEFENDERESSE, AUX LIEU, JOUR, HEURE ET FINS PLUS AMPLEMENT DETAILLES DANS LADITE CITATION, AVEC UNE TRADUCTION DU TOUT EN LANGUE FRANCAISE.

LA PRESENTE SE FAIT POUR SON INFORMATION, DIRECTION ET A TELLES FINS QUE DE DROIT.

DONT ACTE, SOUS TOUTES RESERVES, DUQUEL J'AI HUISSIER LAISSE COPIE AVEC LES PIECES CONTENANT CINQUANTE-TROIS PAGES, A LA PARTIE SIGNIFIEE PREQUALIFIEE DANS LES FORMES PRESCRITES PAR L'ARTICLE 155 DU NOUVEAU CODE DE PROCEDURE CIVILE.

COUT
DROIT FIXE 50,00
VOYAGE(S)
T.V.A. 6,00

ENRG.	12,00	COPIE(S)	12,50
TIMBRES	6,00	T.V.A.	1,50
TOTAL	74,00	TOTAL	58,00



CAMILLE FABER
HUISSIER DE JUSTICE
60, GRAND-RUE TEL 54 23 44 1
L- 1660 LUXEMBOURG FAX 54 54 54

Une copie de l'acte transcrit ci-avant, dénommé .....

ATTESTATION DE REMISE D'ACTE

a été signifiée date qu'en tête
comme suit[1] à GOODYEAR LUXEMBOURG TIRES SOCIETE ANONYME
en son siege social/administrative à AVENUE GORDON SMITH L - 7750 COLMAR-BERG

La signification s'est faite conformément à l'art. [55 al. 2 nouveau C. pr. c. par la remise de la copie

(Nom) (Prénom) (Qualité)
ainsi declare(e), qui l'a acceptée et a affirmé être habilité(e) à la recevoir.

Attendu que le soussigné n'a rencontre sur les lieux ni représentant légal de la destinataire, ni fondé de pouvoir de celui-ci ou autre personne habilitée, la signification s'est faite conformément à l'art. 155 a1. 5 nouveau C. pr. c. par la remise de la copie à
Sitlen Silvie HR Director demeurant à
(Nom) (Prénom) (Qualité)

(Adresse)
ainsi déclaré(e) et de l'âge requis, qui

l'a acceptée et a donné récépissé ci-dessous:

(Signature)

La copie a été remise sous pli fermé ne portant que l'indication des nom, forme juridique et adresse de la société destinataire et le cachet de l'huissier de justice sur la fermeture.

Une autre copie sur papier libre avec l'avis prévu par l'alinéa 5 de l'article 155 nouveau C. pr. c. a été laissée sur les lieux sous enveloppe fermée.

Attendu que l'acte n'a pu être signifié dans les formes prévues par les alinéas 2 à 5 de l'art. 155 nouveau C. pr. C. alors que(2)

- o personne n'a pu être trouvé sue les lieux
- o ni représentant légal de la société destinataire, ni fondé de pouvoir de celui-ci ou autre personne habilitée à cet effet n'ont pu être trouvés sur les lieux et que les personnes présentes
  - o ont refusé d'accepter la copie
  - o ont refusé de donner récépissé
  - o ont refusé de déclarer leurs nom, prénom, qualité et adresse
- o

le soussigné a déposé sur les lieux une copie de l'acte avec l'avis prèvu par la Loi sous enveloppe fermée, après avoir vérifié que la société destinataire y est bien établie en

- o se renseignant au Registre de Commerce
- o

(diligences accomplies)

Le soussigné a en outre envoyé, dans le délai prévu par l'al. 6 de l'art. 155 nouveau C. pr. c., une autre copie de l'acte avec le même avis à la susdite adresse, par simple lettre postée par lui-même au bureau des

P. et T. à Luxembourg.

Date: 19/12/06
s. Camille FABER
Husssier de justice

(1) Biffer ce qui ne convient pas
(2) Cocher la case correspondante

the undersigned has left on the premises a copy of the document with the notice provided by law in a sealed envelope, after verifying that the addressee company is located there by obtaining information from the Registry of Commerce

(due diligence complied with)
Furthermore, the undersigned has sent, within the time provided in par. 6 of article 155 of the new C. of civ. proc., another copy of the document with the same notice at the above-mentioned address, by first class mail sent by him at the Post and Telecommunications Office in Luxembourg.

//Stamp//
Date: 12/19/06
//Signature//
by Camille FABER
Court Bailiff

(1) Strike out as appropriate
(2) Check the appropriate box

GENERAL PROSECUTOR
Secretary

January 12, 2007

CERTIFICATE

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,

1) that the document has been served*

--the (date) December 9.2006
---at (place, street, number) in the head office of the addressee at Colmar-Berg, Avenue Gordon Smith, Luxembourg

☒ --in one of the following methods authorized by article 5---
☐ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention*,
☐ (b) in accordance with the following particular method*:
☒ (c) by delivery to the addressee, who accepted it voluntarily.*

The documents referred to in the request have been delivered to:
--(Identity and description of person) Silvia Sitlen. HR Director
--(relationship to the addressee (family, business or other): Employee

2) that the document has not been served, by reason of the following facts**

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay

or reimburse the expenses detailed in the attached statement*

Annexes
Documents returned:
Original certification of service
And this certificate

Done at Luxembourg, the January 4, 2007

In appropriate cases, documents establishing the service:

Signature and/or stamp:

Camille FABER
Judicial Bailiff
60, Grand-Rue
L-2011 LUXEMBOURG – B.P. 148
Telephone: 54 23 44 17 / Fax 54 54 54

* Delete if inappropriate.

REQUEST
FOR SERVICE ABROAD OF JUDICIAL OR EXTRA JUDICIAL DOCUMENTS [SEAL]

DEMANDE
AUX FINS DE SIGNIFICATION OU DE NOTIFICATION A L'ETRANGER D'UN ACTE JUDICIARE OU EXTRAJUDICIAIRE

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matierè civile

Identity and address of the applicant *Identité et adresse du requérant*	**Address of receiving authority** *Adrese de l'autorité destinataire*
L. Celeste Ingalls** Crowe Foreign Services 1020 SW Taylor Street, Suite 240 Portland, Oregon 97205, USA Email: Lci@foreignservices.com Facsimile No. 1-503-222-3950	Parquet General pres la Cour Supérieure de Justice 12, Cote d'Eich L-1450 Luxembourg Luxembourg Email: parquet.general@mj.etat.lu Tel: (352) 47 5981 1 Fax: (352)-470550

ou commerciale, signée à La Hage, le 15 Novembre 1965.

The undersigned applicant has the honour to transmit – in duplicate – the documents listed below

and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e., (identity and address)

Le requerant soussigné a l'honneur de faire parvenir – en double exemplaire – a l'autorité destinataire les documents ci-dessous énumérés en la priant conformément à l'article 5 de la Convention précitée, d'en faire remetire sans retard un exemplaire au destinataire, savior:

(*identité et adresse*)

Goodyear Luxembourg Tires, S.A.
Ave. Gordon Smith
L- 7750 Colmar-Berg, Luxembourg

☒ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention.*

a) selon les formes légales (article 5, alinéa premier, lettre a).

☐ (b) in accordance with the following particular method (sub paragraph (b) of the first paragraph of article 5)*.

b) selon la forme particulière suivante (article 5, alinéa premier, lettre b).

☐ (c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5)*.

c) le cas échéant, par remise simple (article 5, alinéa 2).

The authority is requested to return or to have returned to the applicant a copy of the document,– and of the annexes* – with a certificate as provided on the reverse side.

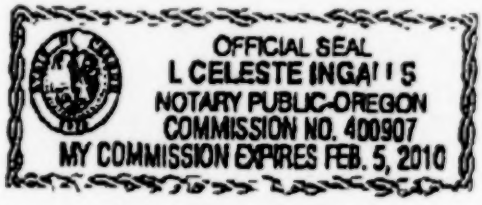
Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte – et de ses annexes – avec l'attestation figurant au verso.

List of documents
Enumération des pièces

Done at Portland, Oregon, USA, the 30th day of Nov, 2006
Fait à Portland, Oregon, USA, le. . .

Executed "Request"
Executed "Summary"
***Summons
***Amended Complaint
Case No. 05 CVS 1922

Signature and/or stamp.
Signature et/ou cachet



/s/ L. Celeste Ingalls
L. Celeste Ingalls

* Delete if inappropriate
Rayer les mentions inutiles

** Authorized applicant pursuant to Rule 4(c)(2) of the Federal Rules of Civil Procedure, Public Law 97-462
*** with French translation

Enregistré à Luxembourg A.C. le

20 DEC. 2006

Vol. 66 fol. 110 case 28

Reçu douze euros (12,-)

Le Receveur,

Joseph MULLER

REQUEST
FOR SERVICE ABROAD OF JUDICIAL OR EXTRA JUDICIAL DOCUMENTS [SEAL]

DEMANDE
AUX FINS DE SIGNIFICATION OU DE NOTIFICATION A L'ETRANGER D'UN ACTE JUDICIARE OU EXTRAJUDICIAIRE

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965

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Identity and address of the applicant *Identité et adresse du requérant*	**Address of receiving authority** *Adrese de l'autorité destinataire*
L. Celeste Ingalls** Crowe Foreign Services 1020 SW Taylor Street, Suite 240 Portland, Oregon 97205, USA Email: Lci@foreignservices.com Facsimile No. 1-503-222-3950	Parquet General pres la Cour Supérieure de Justice 12, Cote d'Eich L-1450 Luxembourg Luxembourg Email: parquet.general@mj.etat.lu Tel: (352) 47 5981 1 Fax: (352)-470550

ou commerciale, signée à La Hage, le 15 Novembre 1965.

The undersigned applicant has the honour to transmit – in duplicate – the documents listed below

and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e., (identity and address)

Le requerant soussigné a l'honneur de faire parvenir – en double exemplaire – a l'autorité destinataire les documents ci-dessous énumérés en la priant conformément à l'article 5 de la Convention précitée, d'en faire remetire sans retard un exemplaire au destinataire, savior:

(identité et adresse)

Goodyear Luxembourg Tires, S.A.
Ave. Gordon Smith
L- 7750 Colmar-Berg, Luxembourg

☒ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention.*

a) selon les formes légales (article 5, alinéa premier, lettre a).

☐ (b) in accordance with the following particular method (sub paragraph (b) of the first paragraph of article 5)*.

b) selon la forme particulière suivante (article 5, alinéa premier, lettre b).

☐ (c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5)*.

c) le cas échéant, par remise simple (article 5, alinéa 2).

The authority is requested to return or to have returned to the applicant a copy of the document,– and of the annexes* – with a certificate as provided on the reverse side.

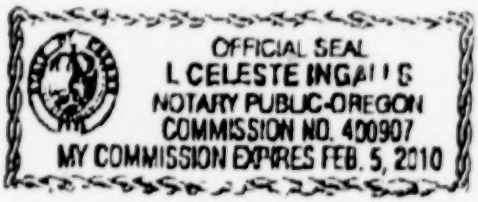
Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte – et de ses annexes – avec l'attestation figurant au verso.

List of documents
Énumération des pièces

Done at Portland, Oregon, USA, the 30th day of Nov, 2006
Fait à Portland, Oregon, USA, le. . .

Executed "Request"
Executed "Summary"
***Summons
***Amended Complaint
Case No. 05 CVS 1922

Signature and/or stamp.
Signature et/ou cachet



/s/ L. Celeste Ingalls
L. Celeste Ingalls

* Delete if inappropriate
Rayer les mentions inutiles

** Authorized applicant pursuant to Rule 4(c)(2) of the Federal Rules of Civil Procedure, Public Law 97-462
*** with French translation

PARQUET GENERAL
SECRETARIAT
12 JAN. 2007

CERTIFICATE
ATTESTATION

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,
L'autorité soussignée a l'honneur d'attesier conformément à l'article 6 de ladite Convention,

1) that the document has been served*
1. que la demande a été exécutée
the (date)
le (date) 19 décembre 2006
at (place, street, number)
à (localité, rue, numéro) au piege de la destinataire à Colomar-Berg. ave. Gordon Smith (G1) de Luxemboug
in one of the following methods authorized by article 5
X *dans une des formes suivantes prévues à l'article 5:*

☐ (a) in accordance with the provisions of the sub-paragraph (a) of the first paragraph of article 5 of the Convention*.
(a) selon les forms légales (article 5, alinéa premier, lettre a)

☐ (b) in accordance with the following particular method*:
(b) selon la forme particulière suivante:

☒ (c) by delivery to the addressee, who accepted it voluntarily.*
(c) par remis simple

The documents referred to in the request have been delivered to:
Les documents mentionnés dans la demande ont été remis à:
(identity and description of person)

X *(identité et qualité de la personne)* Silvia SITLEN, HR director

relationship to the addressee (family, business or other):

lien de parenté, de subordination our autres, avec le destinataire de l'acte: employee

2) that the document has not been served, by reason of the following facts*:

2. que la demande n'a pas été exécutée, en raison des faits suivants:

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement.*

Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint.

Annexes

Annexes

Documents returned:

Pièces renvoyées:

attestation de rescale les originals et prés[ILLEGIBLE]

Done at , the

Fait à Luxembourg , *le* 04 janvier

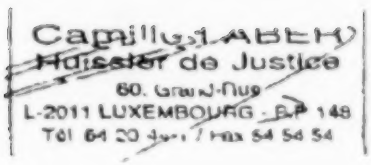
In appropriate cases, documents establishing the service:

Le cas échéant les documents justificatifs de

Signature and/or stamp.

Signature et/ou cachet.

l'execution



*** Delete if inappropriate.**
Rayer les mentions inutiles.

REQUEST
FOR SERVICE ABROAD OF JUDICIAL OR EXTRA JUDICIAL DOCUMENTS [SEAL]

DEMANDE
AUX FINS DE SIGNIFICATION OU DE NOTIFICATION A L'ETRANGER D'UN ACTE JUDICIARE OU EXTRAJUDICIAIRE

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Identity and address of the applicant *Identité et adresse du requérant*	**Address of receiving authority** *Adrese de l'autorité destinataire*
L. Celeste Ingalls** Crowe Foreign Services 1020 SW Taylor Street, Suite 240 Portland, Oregon 97205, USA Email: Lci@foreignservices.com Facsimile No. 1-503-222-3950	Parquet General pres la Cour Supérieure de Justice 12, Cote d'Eich L-1450 Luxembourg Luxembourg Email: parquet.general@mj.etat.lu Tel: (352) 47 5981 1 Fax: (352)-470550

ou commerciale, signée à La Hage, le 15 Novembre 1965.

The undersigned applicant has the honour to transmit – in duplicate – the documents listed below

and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e., (identity and address)

Le requerant soussigné a l'honneur de faire parvenir – en double exemplaire – a l'autorité destinataire les documents ci-dessous énumérés en la priant conformément à l'article 5 de la Convention précitée, d'en faire remetire sans retard un exemplaire au destinataire, savior:

(*identité et adresse*)

Goodyear Luxembourg Tires, S.A.
Ave. Gordon Smith
L- 7750 Colmar-Berg, Luxembourg

☒ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention.*

a) selon les formes légales (article 5, alinéa premier, lettre a).

☐ (b) in accordance with the following particular method (sub paragraph (b) of the first paragraph of article 5)*.

b) selon la forme particulière suivante (article 5, alinéa premier, lettre b).

☐ (c) by delivery to the addressee, if he accepte it voluntarily (second paragraph of article 5)*.

c) le cas échéant, par remise simple (article 5, alinéa 2).

The authority is requested to return or to have returned to the applicant a copy of the document,– and of the annexes* – with a certificate as provided on the reverse side.

Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte – et de ses annexes – avec l'attestation figurant au verso.

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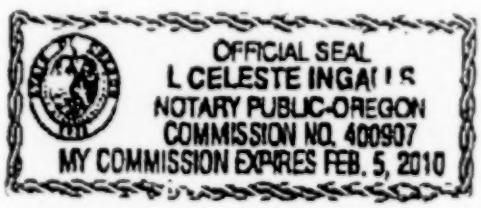
Done at Portland, Oregon, USA, the 30th day of Nov, 2006
Fait à Portland, Oregon, USA, le. . .

Executed "Request"
Executed "Summary"
***Summons
***Amended Complaint
Case No. 05 CVS 1922

Signature and/or stamp.
Signature et/ou cachet



/s/ L. Celeste Ingalls
L. Celeste Ingalls

* Delete if inappropriate
Rayer les mentions inutiles

** Authorized applicant pursuant to Rule 4(c)(2) of the Federal Rules of Civil Procedure, Public Law 97-462
*** with French translation

CERTIFICATE
ATTESTATION

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,
L'autorité soussignée a l'honneur d'attesier conformément à l'article 6 de ladite Convention,

1) that the document has been served*
1. que la demande a été exécutée
the (date)
le (date)
at (place, street, number)
à (localité, rue, numéro)

in one of the following methods authorized by article 5
dans une des formes suivantes prévues à l'article 5:

☐ (a) in accordance with the provisions of the sub-paragraph (a) of the first paragraph of article 5 of the Convention*.
(a) selon les forms légales (article 5, alinéa premier, lettre a)

☐ (b) in accordance with the following particular method*:
(b) selon la forme particulière suivante:

☐ (c) by delivery to the addressee, who accepted it voluntarily.*
(c) par remis simple

The documents referred to in the request have been delivered to:
Les documents mentionnés dans la demande ont été remis à:
(identity and description of person)
(identité et qualité de la personne)

relationship to the addressee (family, business or other):

lien de parenté, de subordination our autres, avec le destinataire de l'acte.

2) that the document has not been served, by reason of the following facts*:

2. que la demande n'a pas été execute, en raison des faits suivants.

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement.*

Conformément à l'article 12. alinéa 2, de ladite Convention, le requèrant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint.

Annexes

Annexes

Documents returned:

Pièces renvoyées:

attestation de rescale les originals et prés[ILLEGIBLE]

Done at , the

Fait à , le

In appropriate cases, documents establishing the service:

Le cas échéant les documents justificatifs de l'execution

Signature and/or stamp.

Signature et/ou cachet.

*** Delete if inappropriate.**
Rayer les mentions inutiles.

SUMMARY OF THE DOCUMENT TO BE SERVED
ELEMENTS ESSENTIELS DE L'ACTE

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965
Convention relative à la signification et à la notification à l'étranger des actes judiciaries et extrajudiciares en matière civile ou commerciale, signée à La Hage, le 15 Novembre 1965.
(article 5, fourth paragraph)
(article 5, alinéa 4)

Name and address of the requesting authority: *Nom et adresse de l'autorité requérante:*	L. Celeste Ingalls Crowe Foreign Services 1020 SW Taylor Street, Suite 240 Portland, Oregon 97205
Particulars of the parties*: *Identité des parties:*	Edgar D. Brown, et al.....PLAINTIFFS Eric R. Meter, et al. .....DEFENDANTS Case No. 05 CVS 1922

JUDICIAL DOCUMENT**
ACTE JUDICIAIRE

Nature and purpose of the document:
Nature et objet de l'acte: To give notice to the defendant, Goodyear Luxembourg Tires, S.A., of the institution against it of a claim for civil damages and to summon it to answer the claim.

Nature and purpose of the proceedings, and, where appropriate, the amount in dispute:
Nature et objet de l'instance, le cas échéant, le montant du litige:

Civil claim for judgment alleging negligence and related actions. Plaintiff's allegations include, but are not limited to, claims that the accident which occurred on or about April 18, 2004 were the direct result of the Defendants' negligence in the design, manufacture, testing, and inspection of the Goodyear product involved with the aforementioned accident causing the deaths of plaintiffs' decedents. Plaintiff seeks judgment including, but not limited to, an amount to be determined, attorneys' fees and costs and of this action, lost earnings, and such other and further relief as the court deems just and proper.

Date and place for entering appearance:** N/A
Date et lieu de la comparution:

Court which has given judgment:** N/A
Juridiction qui a rendu la decision:

Date of judgment:** N/A
Date de la decision:
Time limits stated in the document:**
Indication des délias figurant dans l'acte:
Defendant is required to file an ANSWER with the Clerk of the Court, and serve a copy of same ANSWER upon Plaintiff's attorney, within thirty (30) days after having received the Summons and other documents herein.

EXTRAJUDICIAL DOCUMENT*
ACTE EXTRAJUDICIAIRE

Nature and purpose of the document:
Nature et objet de l'acte:

N/A

Time limits stated in the document**:
Indication des délias figurant dans l'acte.

N/A

* If appropriate, identity and address of the person interested in the transmission of the document.
S'il y a lieu, et adresse de la personne intéressée à la transmission de l'acte.

** Delete if inappropriate.
Rayer les mentions inutiles.

CAMILLE FABER
HUISSIER DE JUSTICE
60, GRAND-RUE TEL 54 23 44-1
L- 1660 LUXEMBOURG FAX 54 54 54

ATTESTATION DE REMISE D'ACTE

L'AN DEUX MIL SIX, LE dix neuf DECEMBRE,

A LA REQUETE DE MONSIEUR LE PROCUREUR GENERAL D'ETAT PRES LA COUR SUPERIEURE DE JUSTICE DU GRAND-DUCHE DE LUXEMBOURG,

ELISANT DOMICILE EN SON PARQUET GENERAL A L - 1450 LUXEMBOURG - 12, COTE D'EICH, ET ENCORE AU SECRETARIAT COMMUNAL DE TOUT LIEU DE SIGNIFICATION,

AGISSANT DANS LE CADRE DE LA CONVENTION RELATIVE A LA SIGNIFICATION ET A LA NOTIFICATION A L'ETRANGER DES ACTES JUDICIAIRES OU EXTRAJUDICIAIRES EN MATIERE CIVILE OU COMMERCIALE, SIGNEE A LA HAYE LE 15 NOVEMBRE 1965,

JE SOUSSIGNE CAMILLE FABER, HUISSIER DE JUSTICE, DEMEURANT A LUXEMBOURG, IMMATRICULE PRES LE TRIBUNAL D'ARRONDISSEMENT DE ET A LUXEMBOURG, AI SIGNIFIE ET LAISSE A

LA SOCIETE ANONYME GOODYEAR LUXEMBOURG TIRES S.A., ETABLIE ET AYANT

SON SIEGE SOCIAL A L – 7750 COLMAR-BERG – AVENUE GORDON SMITH.

UNE CITATION A COMPARAITRE DANS UNE ACTION CIVILE DEPOSEE AU GREFFE DE LA COUR DE JUSTICE GENERALE, DIVISION DE LA COUR SUPREME, DE L'ETAT DE CAROLINE DU NORD, COMTE DE ONSLOW, PAR EDGAR D. BROWN ET PAMELA BROWN, CO-CURATEURS DE LA SUCCESSION DE JULIAN DAVID BROWN, ET KAREN M. HELMS, CURATRICE DE LA SUCCESSION DE MATTHEW M. HELMS, COMME PARTIES DEMANDERESSES, CONTRE LA PARTIE SIGNIFIEE. COMME DEFENDERESSE; AUX LIEU, JOUR, HEURE ET FINS PLUS AMPLEMENT DETAILLES DANS LADITE CITATION, AVEC UNE TRADUCTION DU TOUT EN LANGUE FRANCAISE.

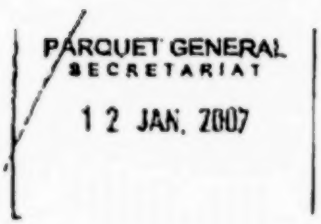
LA PRESENTE SE FAIT POUR SON INFORMATION, DIRECTION ET A TELLES FINS QUE DE DROIT.

DONT ACTE, SOUS TOUTES RESERVES, DUQUEL J'AI HUISSIER LAISSE COPIE AVEC LES PIECES CONTENANT CINQUANTE-TROIS PAGES, A LA PARTIE SIGNIFIEE PREQUALIFIEE DANS LES FORMES PRESCRITES PAR L'ARTICLE 155 DU NOUVEAU CODE DE PROCEDURE CIVILE.

COUT

DROIT FIXE	50,00
VOYAGE(S)	
T.V.A.	6,00

ENRG.	12,00	COPIE(S)	12,50
TIMBRES	6,00	T.V.A.	1,50
TOTAL	74,00	TOTAL	58,00



CAMILLE FABER
HUISSIER DE JUSTICE
60, GRAND-RUE TEL 54 23 44 1
L- 1660 LUXEMBOURG FAX 54 54 54

Une copie de l'acte transcrit ci-avant, dénommé .....
ATTESTATION DE REMISE D'ACTE

a été signifiée date qu'en tête
comme suit(1) à GOODYEAR LUXEMBOURG TIRES SOCIETE ANONYME
en son siege social/administrative à AVENUE GORDON SMITH L - 7750 COLMAR-BERG

La signification s'est faite conformément à l'art. [55 al. 2 nouveau C. pr. c. par la remise de la copie

(Nom) (Prénom) (Qualité)
ainsi declare(e), qui l'a acceptée et a affirmé être habilité(e) à la recevoir.

Attendu que le soussigné n'a rencontre sur les lieux ni représentant légal de la destinataire, ni fondé de pouvoir de celui-ci ou autre personne habilitée, la signification s'est faite conformément à l'art. 155 a1. 5 nouveau C. pr. c. par la remise de la copie à
Sitlen Silvie HR Director demeurant à
(Nom) (Prénom) (Qualité)

(Adresse)
ainsi déclaré(e) et de l'âge requis, qui

l'a acceptée et a donné récépissé ci-dessous:

(Signature)

La copie a été remise sous pli fermé ne portant que l'indication des nom, forme juridique et adresse de la société destinataire et le cachet de l'huissier de justice sur la fermeture.

Une autre copie sur papier libre avec l'avis prévu par l'alinéa 5 de l'article 155 nouveau C. pr. c. a été laissée sur les lieux sous enveloppe fermée.

Attendu que l'acte n'a pu être signifié dans les formes prévues par lea alinéas 2 à 5 de l'art. 155 nouveau C. pr. C. alors que(2)

- o personne n'a pu être trouvé sue les lieux
- o ni représentant légal de la société destinataire, ni fondé de pouvoir de celui-ci ou autre personne habilitée à cet effet n'ont pu être trouvés sur les lieux et que les personnes présentes
  - o ont refusé d'accepter la copie
  - o ont refusé de donner récépissé
  - o ont refusé de déclarer leurs nom, prénom, qualité et adresse

o

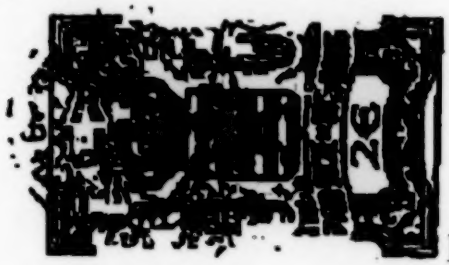
le soussigné a déposé sur les lieux une copie de l'acte avec l'avis prèvu par la Loi sous enveloppe fermée, après avoir vérifié que la société destinataire y est bien établie en

- o se renseignant au Registre de Commerce
- o .....

(diligences accomplies)

Le soussigné a en outre envoyé, dans le délai prévu par l'al. 6 de l'art. 155 nouveau C. pr. c., une autre copie de l'acte avec le même avis à la susdite adresse, par simple lettre postée par lui-même au bureau des

P. et T. à Luxembourg.



Date: 19/12/06
s. Camille FABER
Husssier de justice

(1) Biffer ce qui ne convient pas
(2) Cocher la case correspondante

ETAT DE CAROLINE DU NORD *Dossier N°* 05 CVS 1922

Comté: ONSLOW Dans la Cour de Justice générale
District X Division de la Cour Supreme

Nom de la Partie demanderesse
EDGAR D. BROWN et PAMELA BROWN, Co-curateurs de la SUCCESSION DE JULIAN DAVID BROWN, et KAREN M. HELMS, Curatrice de la SUCCESSION DE MATTHEW M. HELMS,
CONTRE
ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR LASTIKLERI T.A.S. et GOODYEAR DUNLOP TIRES FRANCE SA

CITATION À COMPARAÎTRE DANS UNE AFFAIRE CIVILE

G.S. AS-1, Règles 3, 4
☐ Citations à comparaître de remplacement
Date d'émission de la dernière citation à comparaître

Adressé à chacune des Parties défenderesses designees ci-dessous:

Nom et adresse de la Partie défenderesse N° 1
Goodyear Luxembourg

Nom et adresse de la Partie défenderesse N° 2

Tires, SA
Aux bons soins de: Arthur
de Bok
Président du Conseil
d'administration
Avenue Gordon Smith
L-7750 Colmar-Berg
Luxembourg
Un procès civil est intenté contre vous:

Vous êtes notifié de comparaître et de répondre à la plainte de la partie demanderesse comme suit:

1. Signifiez une copie de votre réponse écrite à cette plainte à l'avocat de la partie demanderesse dans un délai de trente (30) jours après reception de la signification. Vous pouvez signifier votre réponse en livrant une copie à l'avocat ou en l'envoyant par la poste à la dernière adresse connue de la partie demanderesse,et
2. Déposez, l'exemplaire original de la réponse écrite aurprès du Greffe de la Cour supérieure du comté indiqué ci-dessous.

Si vous manquez de répondre à la plainte, la partie demanderesse demandera à la Cour qu'elle lui accorde la reparation demandée dans la plainte.

Nom et adresse de l'avocat
de la partie demanderesse
(à défaut, adresse de la
partie demanderesse)
David F. Kirby
Kirby & Holt, LLP
P.O. Box 31665
Raleigh, Caroline du Nord

Date d'émission 17/04/06
Heure: 14h06
Signature //Signature//
X CSC adjoint Aide CSC

27622

Greffe de la Cour supérieure

AVAL:
Cette citation à comparaître fut initialement émise à la date indiquée ci-dessus et fut retournée sans avoir été signifiée. Sur demande de la partie demanderesse, la périods pendant laquelle cette citation à comparaître doit être signifiée est prolongée de trente (30) jours.

Date d'aval
Heure:

Signature //Signature//
X CSC adjoint Aide CSC
Greffe de la Cour supérieure

NOTE A L'ATTENTION DES PARTIES:

De nombreux Comtés possèdent des programmes d'ARBITRAGE OBLIGATOIRE dans lesquels la plupart des affaires dont le montant dispute est de 15,000 dollars ou moins sont entendus par un arbitre avant le process. Les parties seront notifiées si cette affaire est affectèe à un arbitrage obligatoire et, dans ce cas, de la procédure à suivre.

STIPULATION

The parties hereto stipulate and agree that a copy of the Amended Complaint translated into French, and a copy of the Amended Complaint in English, were attached to the foregoing subpoena when served, but that said copies of the Amended Complaint are not necessary for an understanding of the issues on appeal and are therefore omitted from the Record on Appeal.

NORTH CAROLINA ONSLOW COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 05 CVS 1922 [SEAL]
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS Plaintiffs, v. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA., Defendants.	**AFFIDAVIT OF SERVICE**

William B. Bystrynski, first being duly sworn, says:

1. That he is an attorney for the plaintiffs in the above-captioned case.

2. A copy of a Civil Summons and Complaint was translated and served on defendant, Goodyear Lastikleri T.A.S., by serving Kemal Sacik, as evidenced by the attached Affidavit of Celeste Ingalls and related documents.

3. Said Civil Summons and Complaint were, in fact, received by the defendant Goodyear Lastikleri, on December 14, 2006, as evidenced by the attached affidavit, translation and certificate, in accordance with the Hague Convention.

4. A copy of the original certificate of service from the Turkish Ministry of Justice is also attached.

This the 16th day of May, 2007.

KIRBY & HOLT, L.L.P.

William B. Bystrynski
Attorney for Plaintiff
P.O. Box 31665
Raleigh, NC 27622
(919) 881-2111

Sworn to and subscribed before me this the 16th day of May, 2007.

NANCY C. BURNS
"NOTARY PUBLIC"
JOHNSTON COUNTY, NC
My Commission Expires 4-12-2012

/s/ Nancy C. Burns

Notary Public
My Commission Expires: 4-12-2012

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **Affidavit of Service** in the above-captioned case on all parties to this cause by depositing a copy hereof, postage prepaid, in the United States mail, addressed to the attorney for defendants as follows:

Ronald C. Dilthey
Patterson Dilthey Clay
Bryson & Anderson L.L.P.
4020 WestChase Blvd., Suite 550
Raleigh, NC 27607

Dan J. McLamb
John T. Molleur
Yates, McLamb & Weyher, L.L.P.
P.O. Box 2889
Raleigh, NC 27602-2889

Charlot F. Wood
Bell, Davis & Pitt, P.A.
P. O. Box 21029
Winston-Salem, NC 27120-1029

This the 16th day of May, 2007.

/s/ William B. Bystrynski
William B. Bystrynski

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
ONSLOW COUNTY, NORTH CAROLINA

X

EDGAR D. BROWN, et al., Plaintiffs
v.
ERIC R. METER, et al, Defendants.

Case No. 05 CVS 1922

AFFIDAVIT OF CELESTE INGALLS

X

OREGON)
) ss.
County of Multnomah)

I declare that I, Celeste Ingalls, citizen of the United States, over the age of twenty-one, not a party to the issue in question, and having been duly sworn, depose and state the following:

I am Director of Operations for Crowe Foreign Services, 1020 SW Taylor Street, Suite 240, Portland, Oregon, specializing in providing accurate translation of legal, judicial, extra-judicial and general documents from Turkish into the English language.

I do hereby swear, under oath and penalty of perjury under the laws of the United States of America and the State of North Carolina, that the attached English translation (Exhibit 1) is a true and accurate translation of the original Turkish proof of service documents (Exhibit 2) returned by the Turkish judicial authorities for the service upon

Goodyear Lastikleri T.A.S. in the above captioned matter.

/s/ Celeste Ingalls

SUBSCRIBED AND SWORN to before me this 21st day of February, 2007.

/s/ Kellene M. Martin
Notary Public for Oregon

ISTANBUL BRANCH OF MINISTRY OF JUSTICE
PUBLIC PROSECUTOR'S OFFICE

Ref: 2006/4057 H.M. December 14. 2006
Subject: Istanbul

GENERAL DIRECTORATE OF INTERNATIONAL LAW AND FOREIGN RELATIONS
AT THE MINISTRY OF JUSTICE
ANKARA

Re: Your letter dated November 29, 2006, reference number 8.4.5.13752.96652

The official communication along with the attachments to your above-referenced letter has been delivered to Kemal Saçik, an employee at Goodyeral *[sic!]* Lastikleri. Please find attached the delivery receipt dated December 14, 2006.

Best regards,

Aykut Cengiz ENGIN
Istanbul Chief Public Prosecutor
[signature]

A/H/S/
T/G
Attachment: 1

ISTANBUL BRANCH OF MINISTRY OF JUSTICE
PUBLIC PROSECUTOR'S OFFICE

Ref: 2006/4057 H.M. December 14. 2006
Subject: Istanbul

DELIVERY RECEIPT

The official communication along with the attachments to it sent from the U.S. Central Authority in the attachment to the letter of General Directorate of International Law and Foreign Affairs, Ministry of Justice, dated November 29, 2006, reference number 96652, has been served to the relevant person pursuant to the Hague Convention and Notification Law # 7201 and applicable regulations.

Ateş Hasan SÖZEN	Tubay	Goodyear
Istanbul Deputy	GENDE	Lastikler T.A.Ş.
Chief	Z/K	Employee
Public Prosecutor		Kemal SAÇIK
[signature]	[signature]	[signature]

NOTE: A reminder has been issued that a reply or an objection should be mailed directly to the foreign court in two copies in ENGLISH.

ISTANBUL
CUMHURIYET BAŞSAVCILIĞI
BAKANLIK BÜROSU

Sayit: 2006/4057 H.M. 14/12/2006
Konu: Istanbul

ADALET BAKANLIĞI
ULUSLARARASI HUKUK VE DIŞ ILIŞKILER
GENEL MÜDÜRLÜĞNE

ILGI: 8.4.5.13752.96652 sayili ve 29.11.2006 tarihli yaziniz.

Ilgi sayili yaziniz ekinde alman tebliğ evrakt Goodyeral Lastikleri tarihli Kemal Saçik'a teslim edilmiş olup, bu hususta düzenlenen 14.12.2006 tarihli tebliğ tutanağ ilişikte sünulmuştur.

Arz olunur.

Aykut Cengiz ENGIN
Istanbul Cumhuriyet Başsavcisi

A/H/S

T/G

Eki

ISTANBUL
CUMHURIYET BAŞSAVCILIĞI
BAKANLIK BÜROSU

Sayit: 2006/4057 H.M. 14/12/2006
Konu: Istanbul

TEBLIGAT TUTANAĞI

Adalet Bakanliği Uluslararasi Hukuk ve Diş Ilişkiler Genel Müdürlügünün 29.11.2006 tarih ve 96652 sayili yazisi ekinde ahman AMERIKA Merkezi Makamindan gönderilen tebliğ evraki ve ekleri La Haye Sözleşmesi ve 7201 sayili Tebligat Kanunu ve Tüzüğü hükümlerine göre yetkilisine tebliğ edimiştir.

Ateş Hasan SÖZEN	Tubay	Goodyear
Ist. Cumhuriyet	GENDE	Lastikler T.A.Ş.
Başsavci Vekili	Z/K	çalişant Kemal SAÇIK
[signature]	[signature]	[signature]

NOT: Cevap veya itirazin belirtilen süre içerisinde iki örnek INGILIZCE dilinde düzenlenerek doğrudan yabanci mahkemesine gönderilmesi haurlatudt.

Talepuamenin arka sayfasi
Reverse of the request

Tasdikname
Certificate

Aşağida imzasi bulunan makam, Sözleşmenin 6 ncr maddesi uyarmca tasdik etmekle şeref duyar

The undersigned authority has the honour to certify, in conformity with the article 6 of the convention.

1. Evrak Tebliğ edilmiştir.
1. That the document has been served

--- tarihi: the (date) 14.12.2006

---yer,cadde,sokak,numara: at (place,street, number)

Aşağida gösterilen ve 5 inci maddede öngörülmüş olan usuallerden biri ile.

In one of the following methods authorised by article 5–

☐ a) Sözleşmenin 5 inci maddesinin birinci ukrasmun (a) bendindeki hükme göre

a) In accordance with the provisions of sub, paragraph (a) of the first paragraph of article 5 of the convention

☐ Die Zustellung ist gemaess demn Artikel 35 des Zustellungsgesetzes erfolgt

☐ La notification est accomplice d'après l'article 35 du Code de la Notification

☐ The document has been served, according to Article 35 of the Law of the Notification

☐ b) Aşağidaki özel usul ile

b) In accordance with the following particular method

☐ c) Kendi arzusu ile kabul eden muhataba tevdi suretiyle

c) By delivery to the addressee who accepts it voluntarily

Talepte sözü edilen, evrakin kendisine tevdi edildiği kimse:

The documents referred to in the request have delivered to:

Şahsim kimliği sifatz

Identity and description of person

Bu şabsum muhataba olan yakunhği (aileyi, is veya başka)

Relationship to the addressee (family, business or other)

2. Aşağida belirtilen nedenlerle evrak tebliğ edilememiştir.

2. That the document has not been served, by reason of the following facts

Müracaatçunum ilişik belgede açklanan masraflari sözleşmenin 12 nei maddeşinin ildnci fikrasi uyaruca ödemesi rica olunur.

In conformity with the second paragraph of article 12 of the convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement.

Ekler --- Annexes

Iade olunan belgeler --- Documents returned

Documents

Yer Adt ANKARA Tarih

Done at	the 27.12.2006
Lüzumu halinde tebliğ işlemini tespit eden vesikalar: In appropriate cases, documents establishing the service	Imza ve/veya mühür Signature and/or stamp. Judge 38282

Lüzumsuz yerleri çiziniz.
Delete if inappropriate.

T.C.
ADALET BAKANLIĞI
Uluslararasi Hukuk ve Dişilişkiler Genel Müdürlüğü

ANKARA

Republic of Turkey Ministry of Justice General Directorate of International Law and Foreign Relations	République de Turquie Ministère de la Justice Direction Générale du Droit International et des Relations Extérieures

Sayit: B.03.0.UIG.0.00.00.08 4.5.13752.2006
Konu: Goodyear Lastikleri T.A.Ş.

L. Celeste Ingalls
Crowe Foreign Services
1020 SW Taylor Street, Suite 240
Portland, Oregon 97205 USA

Talep edenin sifat ve adresi:
Identity and Address of the Applicant:

04.0107 00534

Talep Tarihi:
Date of Application: 16.11.2006

Sayi veya Dosya No
Ref or case No 05 CVS 1922

Dear Madam/sir

15 Kasim 1965 tarihli Adli ve Gayriadli Belgelerin Yabanes Ülkelerde Tebliğine Dair Lahey Sözleşmesine göre belgelerin tebliğine ilişkin talep yerine getirilmiş ve tebliğ tutanağı ile sertifika ekte iletilmiştir.

We are pleased to inform you that the request for the service of documents under the Hague Convention on the Service Abroad of .Judicial and Extrajudicial Documents of 15 November 1965 has been executed and return enclosed herewith a copy of receipt conforming delivery and service the certificate.

Bu vesileyle saygilarmizi teyit ederiz.

We avail ourselves this opportunity to assure to you our highest consideration.

Dr. Erzli DOĞAN
On behalf of the Minister
of Justice Judge
Deputy General Director

Ek : Belgeler
Annex: Documents

REQUEST
FOR SERVICE ABROAD OF JUDICIAL OR EXTRA JUDICIAL DOCUMENTS
DEMANDE
AUX FINS DE SIGNIFICATION OU DE NOTIFICATION A L'ETRANGER D'UN ACTE JUDICIARE OU EXTRAJUDICIAIRE
Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965
Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matierè civile ou commerciale, signée à La Hage, le 15 Novembre 1965.

Identity and address of the applicant *Indentité et adresse du requérant*	**Address of receiving authority** *Adrese de l'autorité destinataire*
L. Celeste Ingalls** Crowe Foreign Services 1020 SW Taylor Street, Suite 240 Portland, Oregon 97205, USA Email: Lci@foreignservices.com Fax Number: 1-503-222-3950	Adalet Bakanllgi Hukuk Isleri Genel Müdürlügü Milill Müdafa Caddesi No: 22 Ek Bina 5 Kat Bakanliklar 06659 Kizilay Ankara, Turkey Email: bigm@adalet.gov.tr Tel: 90 312 425 1350

The undersigned applicant has the honour to transmit – in duplicate – the documents listed below and, in conformity with article 5 of the above-

mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e.,

(identity and address)

Le requerant soussigné a l'honneur de faire parvenir – en double exemplaire – a l'autorité destinataire les documents ci-dessous énumérés en la priant conformément à l'article 5 de la Convention précitée, d'en faire remetire sans retard un exemplaire au destinataire, savior:

(*identité et adresse*)

Goodyear Lastikleri T.A.S.
Buyukdere Cad
Maslak Maydani, No. 41 Levent
Istanbul 80670

☒ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention.*

a) selon les formes légales (article 5, alinéa premier, lettre a).

☐ (b) in accordance with the following particular method (cub paragraph (b) of the first paragraph of article 5)*.

b) selon la forme particulière suivante (article 5, alinéa premier, lettre b).

☐ (c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5)*.

c) le cas échéant, par remise simple (article 5, alinéa 2).

The authority is requested to return or to have returned to the applicant a copy of the document,– and of the annexes* – with a certificate as provided on the reverse side.

Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte – et de ses annexes – avec l'attestation figurant au verso.

List of documents
Enumération des pièces

Done at Portland, Oregon, USA, the 16th day of Nov, 2006
Fait à Portland, Oregon, USA, le. . .

Executed "Request"
Executed "Summary"
*****Summons**
*****Amended Complaint**
Case No. 05 CVS 1922

Signature and/or stamp.
Signature et/ou cachet

/s/ L. Celeste Ingalls
L. Celeste Ingalls

*** Delete if inappropriate**
Rayer les mentions inutiles

**** Authorized applicant pursuant to Rule 4(c)(2) of the Federal Rules of Civil Procedure, Public Law 97-462**
***** with Turkish translations**

ISTANBUL
CUMHURIYET BAŞSAVCILIĞI
BAKANLIK BÜROSU

Sayit: 2006/4057 H.M. 14/12/2006
Konu: Istanbul

ADALET BAKANLIĞI
ULUSLARARASI HUKUK VE DIŞ ILIŞKILER
GENEL MÜDÜRLÜĞNE

ANKARA

ILGI: 8.4.5.13752.96652 sayili ve 29.11.2006 tarihli yaziniz.

Ilgi sayili yaziniz ekinde alman tebliğ evrakt Goodyeral Lastikleri Şirket calişant Kemal Saçik'a teslim edilmiş olup, bu hususta düzenlenen 14.12.2006 tarihli tebliğ tutanağ ilişikte sünulmuştur.

Arz olunur.

Aykut Cengiz ENGIN
Istanbul Cumhuriyet Başsavcisi

A/H/S

T/G

Eki

T.C.
ISTANBUL
CUMHURIYET BAŞSAVCILIĞI
BAKANLIK BÜROSU

Sayit: 2006/4057 H.M. 14/12/2006
Konu: Istanbul

TEBLIGAT TUTANAĞI

Adalet Bakanliği Uluslararasi Hukuk ve Diş Ilişkiler Genel Müdürlügünün 29.11.2006 tarih ve 96652 sayili yazisi ekinde ahman AMERIKA Merkezi Makamindan gönderilen tebliğ evraki ve ekleri La Haye Sözleşmesi ve 7201 sayili Tebligat Kanunu ve Tüzüğü hükümlerine göre yetkilisine tebliğ edimiştir.

Ateş Hasan SÖZEN	Tubay	Goodyear
Ist. Cumhuriyet	GENDE	Lastikler T.A.Ş.
Başsavci Vekili	Z/K	çalişant Kemal SAÇIK
[signature]	[signature]	[signature]

NOT: Cevap veya itirazin belirtilen süre içerisinde iki örnek INGILIZCE dilinde düzenlenerek doğrudan yabanci mahkemesine gönderilmesi haurlatudt.

KUZEY CAROLINA EYALETI	Dosya No 05 CVS 1922
ONSLOW Ilçesi	Genel Adalet Mahkemesi ☐ Bölge ☒ Yüksek Mahkerne Dairesi
Davacinin Adi JULIAN DAVID BROWN MAMELEKININ Eş Idarecileri EDGAR D. BROWN ve PAMELA BROWN ile MATTHEW M. HELMS MAMELEKININ Idarecisi KAREN M. HELMS	**MAHKEME CELBI** **G:S. 1A-1, Kurai 3-4**
DAVALILAR ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOOYEAR LASTIKLERI, T.A.Ş. ve GOODYEAR DUNLOP	☐ Takma Isimler ve Birden Çok Davaliya Mahkeme Celbi *Düzenlenen Son Mahkeme Celbi*

TIRES FRANCE S.A.

Aşağidaki Davalumin (Davahlarm) Adina

1. Davalmin Adi ve Adresi	*2. Davalmin Adi ve Adresi*
Goodyear Lastikleri T.A.S. c/o R.H. Howe, Başkan Büyükdere Cad, Maslak Meydani, No:41 Levent Istanbul. 80670 Türkiye	

Aleyhinize bir Özel Hukuk Davasi Açilmiştir

Size aşağida açiklanan şekilde huzura felmeniz ve davacinun dilekçesina aşağidaki şekilde yanit vermeniz gerektiği bildirilmektedir.

1. Davaci dilekçesine karşilik yazili cevabinizin bir suretini, tebligatin tarafiniza yapilmasindan, snora otuz (30) gün içerisinde davasinin avukatina tebliğ ediniz. Cevabinizi, bir surety davaciya teslim ederek veya davacinun son bilinen adresine posta ile göndererek tebliğ edebilirsiniz.
2. Yazlu cevabinizin aslim yukanda yazili ilçenin Yüksek Mahkeme Katibine veriniz.

Davaci dilekçesine cevap vermemeniz halinde davaci dilekçesinde talep edilen hukuki care için Mahkemeye başvuracaktur.

Davcinin Avukatinin Adresi (Yoksa Davacinin Adresi)	*Düzenleme Tarihi:*	Saat
David F. Kirby Kirby & Holt, LLP	4/17/06 *Imza* (imza)	14:06

P.O. Box 31665
Raleigh, North Carolina 27622
☐ ONAY
Işbu Dava Celbi esasen yukanda yazili tarihte düzenlenmiş ve tebliğ edilmeden iade olmuştur. Davacinin talebi üzerine Mahkeme Celbinin tebliğ edilmesi gereken süre otuz (30) gün için uzatilmiştir.

☒ YMK Vekili ☐ YMK Yardimcisi ☐ Yüksek Mahkeme Katibi
Onay Tarihi | Saat
Imza

☒ YMK Vekili ☐ YMK Yardimcisi ☐ Yüksek Mahkeme Katibi

TARAFLARA NOTTUR: *Pek çok Ilçede ZORUNLU TAHKIM programlari mevcuttur ve ihtilafa konu meblağin 15,000 $ veya daha az olduğu davanin pek çoğu bir duruşmadan once bir hakem tarafindan dinlenmektedir. Işbu davanin zorunlu tahkime tabi tutlmasi halinde izlenmesi gereken usuller taraflara bildirilecektir.*

STIPULATION

The parties hereto stipulate and agree that a copy of the Amended Complaint translated into Turkish, and a copy of the Amended Complaint in English, were attached to the foregoing subpoena when served, but that said copies of the Amended Complaint are not necessary for an understanding of the issues on appeal and are therefore omitted from the Record on Appeal.

NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
ONSLOW COUNTY	SUPERIOR COURT DIVISION
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS Plaintiffs, v. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA., Defendants.	05 CVS 1922 **AFFIDAVIT OF SERVICE**

FILED
2007 MAY 17 PM 4:44
ONSLOW COUNTY, C.S.C.
BY

William B. Bystrynski, first being duly sworn, says:

1. That he is an attorney for the plaintiffs in the above-captioned case.

2. A copy of a Civil Summons and Complaint was translated and served on defendant, Goodyear Dunlop Tires France, S.A., by serving Mr. Guillaume Nonain, as evidenced by the attached Affidavit of Celeste Ingalls.

3. Said Civil Summons and Complaint were, in fact, received by the defendant Goodyear Dunlop Tires France, S.A., on February 1, 2007, as evidenced by the attached affidavit, translation and certificate, in accordance with the Hague Convention.

4. A copy of the original certificate of service from the Ministry of Justice is also attached.

This the 16th day of May, 2007.

KIRBY & HOLT, L.L.P.

William B. Bystrynski
Attorney for Plaintiff
P.O. Box 31665
Raleigh, NC 27622
(919) 881-2111

Sworn to and subscribed before me this the 16th day of May, 2007.

/s/ Nancy C. Burns

NANCY C. BURNS
"NOTARY PUBLIC"
JOHNSTON COUNTY, NC
My Commission Expires 4-12-2012.

Notary Public
My Commission Expires: 4-12-2012

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **Affidavit of Service** in the above-captioned case on all parties to this cause by depositing a copy hereof, postage prepaid, in the United States mail, addressed to the attorney for defendants as follows:

Ronald C. Dilthey
Patterson Dilthey Clay
Bryson & Anderson L.L.P.
4020 WestChase Blvd., Suite 550
Raleigh, NC 27607

Dan J. McLamb
John T. Molleur
Yates, McLamb & Weyher, L.L.P.
P.O. Box 2889
Raleigh, NC 27602-2889

Charlot F. Wood
Bell, Davis & Pitt, P.A.
P. O. Box 21029
Winston-Salem, NC 27120-1029

This the 16th day of May, 2007.

/s/ William B. Bystrynski
William B. Bystrynski

NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
ONSLOW COUNTY	SUPERIOR COURT DIVISION 05 CVS 1922
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, And KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS Plaintiffs	)
v.	) AFFIDAVIT OF CELESTE INGALLS
ERIC R. METER, et al Defendants.	)

OREGON)
) ss.
County of Multnomah)

I declare that I, Celeste Ingalls, citizen of the United States, over the age of twenty-one, not a party to the issue in question, and having been duly sworn, depose and state the following:

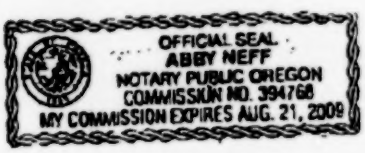
I am Director of Operations for Crowe Foreign Services, 1020 SW Taylor Street, Suite 240, Portland, Oregon, specializing in providing accurate translation

of legal, judicial, extra-judicial and general documents from French to English language.

I do hereby swear, under oath and penalty of perjury under the laws of the United States of America and the State of North Carolina, that the attached English translation (Exhibit 1) is a true and accurate translation of the original French proof of service documents (Exhibit 2) returned by the French judicial authorities for the service upon Goodyear Dunlop Tires France, S.A. in the above captioned matter.

/s/ Celeste Ingalls

SUBSCRIBED AND SWORN to before me this 22 day of March, 2007.



/s/ Abby Neff
Notary Public for Oregon

ADDRESSED TO: DISTRICT ATTORNEY'S OFFICE IN NANTERRE

FOR THE USE OF THE DISTRICT ATTORNEY'S OFFICE

//Left Margin//

REPUBLIC OF FRANCE
MINISTRY OF THE INTERIOR
GENERAL DIRECTORATE OF THE NATIONAL POLICE
Infractions
Report: 2006/03349/J
CASE: GOODYEAR DUNLOP TIRES FRANCE
JUDICIAL DOCUMENT NOTIFICATION AND SERVICE
PURPOSE: HEARING OF NONAIN GUILLAUME, THE COMPANY'S JUDICIAL DIRECTOR

//Seal//: MINISTRY OF THE INTERIOR
NATIONAL POLICE
LOCAL DIRECTORATE OF PUBLIC SAFETY
HAUTS-de-SEINE
REVIEWED and FORWARDED
Feb. 5, 2007
The Superintendent,
Department Head
//Signature//

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REPORT

In the year two thousand seven,
On February first, at 10:40 AM

I, the undersigned, Cindie RONDEAU

POLICE OFFICER
assigned to RUEIL MALMAISON

Officer of the Judiciary Police in RUEIL MALMAISON
–In my official capacity,–
–Acting in accordance with the instructions received from Mr. CHAMOULAUD Bertrand, Police Superintendent, in charge of the District of RUEIL MALMAISON,–
–For the execution of instructions from the attached document from the office of the District Attorney,–
–Have summoned before me Mr. NONAIN Guillaume, residing at 8 rue Lionel Terray, telephone: 01/47/16/24/09, and have Informed him of the followlng:–
–Upon instructions from the Public Prosecutor with the NANTERRE District Court, I am serving you with a legal document from the UNITED STATES, a foreign country.–

THE OFFICER OF THE JUDICIARY POLICE
//Signature//

–Further,–
–The subject stated as follows:–
–"This service of a legal document is indeed for GOODYEAR DUNLOP TIRES FRANCE, SA, 8 rue Lionel Terray 92500 RUEIL MALMAISON, regarding case number 05 CVS 1922.–
–I am duly noting it and I acknowledge that you are serving me with the associated document.–
–By signing this form, I am giving you proof of receipt.–
–This document is a summons in a civil case."–

SIGNATURE OF THE SUBJECT
THE OFFICER OF THE JUDICIARY POLICE

As proof of service
//Signature// //Signature//

–Case thus closed, for transmittal to the Public Prosecutor with the NANTERRE District Court.–

THE OFFICER OF THE JUDICIARY POLICE
//Signature//

DESTINATAIRE PARQUET DE NANTERRE	RESERVE AU PARQUET
REPUBLIQUE FRANCAISE MINISTRE DE L'INTERIEUR DIRECTION GENERALE DE LA POLICE NATIONALE Contraventions P.V. t 2006 0334915 AFFAIRE/GOODYEAR DUNLOP TIRES FRANCE NOTIFICATION ET REMISE D'ACTE JUDICIAIRE OBJET/AUDITION DE NONAIN GUILLAUME, DIRECTEUR JURIDIQUE DE LA SOCIETE	**PROCES VERBAL** L'an deux mille sept, le premier février à dix heures quarante Nous, Cindie, RONDEAU GARDIE DE LA PAIX en fonction RUEIL MALMAISON Agent de Police Judiciaire en résidence RUEIL MALMAISON –Etant au service, – –Agissant conformément aux instructions reçues de Monsieur CHAMOULAID Bertrand, Commissaire de Police, chargé de la circonscription de RUEIL MALMAISON,– –En exécution des instructions de la pièce parquet ci-jointe,– –Avons fait comparaître devant nous Monsieur NONAIN Guillaume demeurant 8 rue Lionel Terray téléphone

VU et TRANSMIS

Le 5 Feb 2007
[SEAL]

Le
Le Commissaire
Chas de Service

01/47/76/24/09, et lui avons déclaré ce qui suit:–
–Sur instructions de Monsieur Le Procureur de la République du Tribunal de Grande Instance de NANTERRE, nous vous notifions une remise d'acte judiciaire en provenance de l'étranger: LES ETATS UNIS.–

L'AGENT DE POLICE
JUDICIAIRE

–De meme suite, –
–L'intéressé nous declare:–
–"Cette remise d'acte judiciaire s'applique bien à GOODYEAR DUNLOP TIRES FRANCE, SA, 8 rue Lionel Terray 92500 RUEIL MALMAISON concernant le dossier numéro 05 CVS 1922.–
–J'en prends acte et je constate que vous me remettez l'acte qui s'y a rapporte.–
–Je vous en donne décharge en signant le présent.–
–Cet acte est une citation à comparaître dans une affaire civile".–

SIGNATURE DE
L'INTERESSE
Pour valoir de Notification

L'AGENT DE POLICE
JUDICIAIRE

–Dont acte clos pour être transmis à Monsieur le Procureur de la République près le Tribunal de Grande Instance de NANTERRE.–

REQUEST
FOR SERVICE ABROAD OF JUDICIAL OR EXTRA JUDICIAL DOCUMENTS [SEAL]

DEMANDE
AUX FINS DE SIGNIFICATION OU DE NOTIFICATION A L'ETRANGER D'UN ACTE JUDICIARE OU EXTRAJUDICIAIRE

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965

Convention relative à la signification et à la notification à l'étranger des actes judiciaires ou extrajudiciaires en matierè civile ou commerciale, signée à La Hage, le 15 Novembre 1965.

Identity and address of the applicant *Indentité et adresse du requérant*	**Address of receiving authority** *Adrese de l'autorité destinataire*
L. Celeste Ingalls** Crowe Foreign Services 1020 SW Taylor Street, Suite 240 Portland, Oregon 97205, USA Email: Lci@foreignservices.com Facsimile No. 1-503-222-3950	Ministere de la Justice Bureau de l'Entraide Judiciaire Internationale D4 13 Place Vendome 75042 Paris, Cedex 01 FRANCE

The undersigned applicant has the honour to transmit – in duplicate – the documents listed below and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of

one copy thereof on the addressee, i.e., (identity and address)

Le requérant soussigné a l'honneur de faire parvenir – en double exemplaire – a l'autorité destinataire les documents ci-dessous énumérés en la priant conformément à l'article 5 de la Convention précitée, d'en faire remetire sans retard un exemplaire au destinataire, savior:

(identité et adresse)

Goodyear Dunlop Tires France, S.A.
8 rue Lionel Terray
Rueil Malmaison

☒ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention.*

a) selon les formes légales (article 5, alinéa premier, lettre a).

☐ (b) in accordance with the following particular method (sub paragraph (b) of the first paragraph of article 5)*.

b) selon la forme particulière suivante (article 5, alinéa premier, lettre b).

☐ (c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5)*.

c) le cas échéant, par remise simple (article 5, alinéa 3).

The authority is requested to return or to have returned to the applicant a copy of the document,– and of the annexes* – with a certificate as provided on the reverse side.

Cette autorité est priée de renvoyer ou de faire renvoyer au requérant un exemplaire de l'acte – et de ses annexes – avec l'attestation figurant au verso.

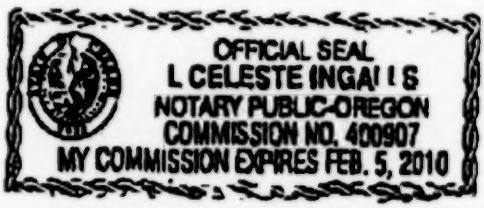
List of documents

Enumération des pièces

Done at Portland, Oregon, USA, the 17th day of Nov, 2006
Fait à Portland, Oregon, USA, le. . .

Executed "Request"
Executed "Summary"
***Summons
***Amended Complaint
Case No. 05 CVS 1922

Signature and/or stamp.
Signature et/ou cachet



/s/ L. Celeste Ingalls
L. Celeste Ingalls

* Delete if inappropriate
Rayer les mentions inutiles

** Authorized applicant pursuant to Rule 4(c)(2) of the Federal Rules of Civil Procedure, Public Law 97-462
*** with French translation

ATTESTATION

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,
L'autorité soussignée a l'honneur d'attesier conformément à l'article 6 de ladite Convention,

1) that the document has been served*
1. que la demande a été exécutée
the (date)
le (date) Jeudi 1er Février 2007
at (place, street, number)
à (localité, rue, numéro) RUEIL MALMAISON 168 Avenue Paul Joumer
in one of the following methods authorized by article 5
dans une des formes suivantes prévues à l'article 5:
☒ **(a) in accordance with the provisions of the sub-paragraph (a) of the first paragraph of article 5 of the Convention*.**
(a) selon les forms légales (article 5, alinéa premier, lettre a)
☐ **(b) in accordance with the following particular method*:**
(b) selon la forme particulière suivante:
☒ **(c) by delivery to the addressee, who accepted it voluntarily.***
(c) par remis simple
The documents referred to in the request have been delivered to:
Les documents mentionnés dans la demande ont été remis à:
(identity and description of person)

(identité et qualité de la personne)
Monsieur NONAIN Guillaume. Directeur Juridique de la Société – Goodyear Dunlop.

relationship to the addressee (family, business or other):

lien de parenté, de subordination our autres, avec le dessinataire de l'acte.

2) that the document has not been served, by reason of the following facts*:

2. *que la demande n'a pas été execute, en raison des faits suivants:*

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement.*

Conformément à l'article 12. alinéa 2, de ladite Convention, le requèrant est prié de payer ou de rembourser les frais dont le d'etail figure au mémoire ci-joint.

Annexes
Annexes

Documents returned:
Pièces renvoyées:
une copie de l'acte judiciaire
l'attestation le procès verbal de remise

Done at , the

Fait à Rueil Malmaison, le 1/02/07

In appropriate cases, documents establishing the service:

Signature and/or stamp.

Le cas échéant les documents justificatifs de l'execution

Signature et/ou cachet.

COMMISSARIAT de POLICE
168, Av. Paul Doumer
92500 RUEIL-MALMAISON
Tél. 47.16.26.00 - Fax 47 16.26.11

*** Delete if inappropriate.**
Rayer les mentions inutiles.

SUMMARY OF THE DOCUMENT TO BE SERVED
ELEMENTS ESSENTIELS DE L'ACTE

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965
Convention relative à la signification et à la notification à l'étranger des actes judiciaires et extrajudiciares en matière civile ou commerciale, signée à La Hage, le 15 Novembre 1965.
(article 5, fourth paragraph)
(article 5, alinéa 4)

Name and address of the requesting authority: *Nom et adresse de l'autorité requérante:*	**L. Celeste Ingalls Crowe Foreign Services 1020 SW Taylor Street, Suite 240 Portland, Oregon 97205**
Particulars of the parties*: *Identité des parties:*	**Edgar D. Brown, et al.....PLAINTIFFS Eric R. Meter, et al. .....DEFENDANTS Case No. 05 CVS 1922**

JUDICIAL DOCUMENT**
ACTE JUDICIAIRE

Nature and purpose of the document:
Nature et objet de l'acte: **To give notice to the defendant, Goodyear Dunlop Tires France, S.A., of the institution against him of a claim for civil damages and to summon him to answer the claim.**

Nature and purpose of the proceedings, and, where appropriate, the amount in dispute:
Nature et objet de l'instance, le cas échéant, le montant du litige:

Civil claim for judgment alleging negligence and related actions. Plaintiff's allegations include, but are not limited to, claims that the accident which occurred on or about April 18, 2004 were the direct result of the Defendants' negligence in the design, manufacture, testing, and inspection of the Goodyear product involved with the aforementioned accident causing the deaths of plaintiffs' decedents. Plaintiff seeks judgment including, but not limited to, an amount to be determined, attorneys' fees and costs and of this action, lost earnings, and such other and further relief as the court deems just and proper.

Date and place for entering appearance:** N/A
Date et lieu de la comparution:

Court which has given judgment:** N/A
Juridiction qui a rendu la decision:

Date of judgment:** N/A
Date de la decision:
Time limits stated in the document:**
Indication des délias figurant dans l'acte:

Defendant is required to file an ANSWER with the Clerk of the Court, and serve a copy of same ANSWER upon Plaintiff's attorney, within thirty (30) days after having received the Summons and other documents herein.

EXTRAJUDICIAL DOCUMENT*
ACTE EXTRAJUDICIAIRE

Nature and purpose of the document: N/A
Nature et objet de l'acte:

Time limits stated in the document:** N/A
Indication des délias figurant dans l'acte.

*** If appropriate, identity and address of the person interested in the transmission of the document.**
S'il y a lieu, et adresse de la personne intéressée à la transmission de l'acte.

**** Delete if inappropriate.**
Rayer les mentions inutiles.

Liberté Égalité Fraternité
RÉPUBLIQUE FRANÇAISE

MINISTÈRE DE LA JUSTICE	Le Garde des Sceaux, Ministère de la Justice
	à
DIRECTION DES AFFAIRES CIVILES ET DU SCEAU	Madame ou Monsieur le Procureur de la République Service civil
BUREAU DE L'ENTRAIDE CIVILE ET COMMERCIALE INTERNATIONALE	Tribunal de Grande Instance 179-191 Avenue Joilot Curie 92020 NANTERRE

03 Dossier suivi par: Jocelyne MAUGEE
Téléphone: 01.44.77.62.43
FAX: 01.44.77.61.22

Référence à rappeler:
D3/8275TR2006/ETATS-UNIS D'AMERIQUE

Objet: Transmission d'acte sur le fondement de la Convention de La Haye du 15 novembre 1965 *relative à la signification et à la notification à l'étranger des actes judiciaires et extrajudiciaires en matière civile et commerciale* (J.O du 14 novembre 1972)-Articles 688-1 et suivants du NCPC

Texte de référence: Circulaire NOR JUS CO5 20 961 C (CIV/20/05) du 1er février 2006, relative: aux "Notifications internationales des actes judiciaires et extrajudiciaires en matière civile et commerciale" [la partie pratique de la circulaire est disponible sur

l'Internet à l'adresse: www.entraide-civile-internationale.justice.gouv.fr

Références: Envoi ETATS UNIS du 17 novembre 2006 - Citation à comparaître dans une Affaire Civile - Etat de Caroline du nord

Destinataire: GOODYEAR DUNLOP TIRES FRANCE SA

Je vous prie de bien vouloir faire remettre à son destinataire domicilié dans votre ressort le présent acte.

Je vous rappelle que conformément aux dispositions de l'article 688-3 du nouveau code de procédure civile "lorsque la notification est faite par les soins du ministère public, elle a lieu par voie de simple remise et sans frais". Par voie de conséquence, il ne vous; appartient pas, en l'espèce, de saisir un huissier aux fins de signification, mais les services compétents de la Police natidnale ou de la Gendarmerie nationale.

Par ailleurs, dans l'hypothese où l'acte ne serait pas traduit en français, il conviendra d'informer le destinataire de la faculté qu'il a d'en refuser la notification, en application des dispositions de l'article 688-6 du Nouveau Code de Procédure Civile.

Conformément à la déclaration faite par la France lors de la ratification du traité, **vous voudrez bien retoumer l'attestation de remise jointe, dûment renseignée par vos soins, constatant**

l'exécution ou le défaut d'exécution, directement à l'autorité requérante dont l'adresse figure sur le formulaire de demande.

DACS
13, place Vendôme
75042 Paris Cedex 01
Téléphone: 01 44 77 61 05

[SEAL]
Cachet de Minsistre de la Justice

TRIBUNAL DE GRANDE INSTANCE DE NANTERRE
(HAUTS-DE-SEINE)
179-191, Avenue Joliot-Curie – 92020 NANTERRE – CEDEX – TEL 40.97.10.10

PARQUET DU PROCUREUR DE LA REPUBLIQUE

CABINET

Affaire N° 66E06
Transmis à Monsieur le

- ☐ Procureur de la République
- ☐ Président du Tribunal d'instance
- ☐ Officier du Ministére Public du Tribunal de Police
- ☐ Directeur de la Police Judiciaire de la Préfecture de Polica Brigade.....
- ☐ Commissaire Divisionnaire Chef de la B.T.
- ☐ Directeur Département des Polices Urbaines
- ☐ Commissaire de Police
- ☐ Commandant de Gendarmerie
- ☐ Maire
- ☐ Secrétaire-graffler en Chef
- ☐ Survellant Chef de la Maison d'Arrêt
- ☐ .....A Rueil Malmaison

En le priant de bien vouloir:

FAIRE	M'ADRESSER
☐ Exécuter les instructions du Parquet de (*)	☐ Copie de l'acte de naissance, décès, marriage de (*)
☐ Préciser l'objet de la requête (*)	☐ Copie du jugement du(*)
☐ Recevoir la plainte et procèder à une enquête (*)	☐ Un extrait du registre d'écrou (*)
☐ Remettre contre récépissé les pieces jointes (*)	☐ Le process-verbal relative à (*)
☐ Entendre (*)	☐ Le rapport concernant (*)
☐ Connaître à (*)	
☐ Citer (*)	
☐ Signifier (*)	
☐ Régularier l'écrou (*)	
☐ Pour exécution (*)	☐ Pour enquête(*)
☐ Pour notification (*)	☐ Objet rempli (*)
☐ Se trouver competent (*)	☐ Objet non rempli

(*)

[STAMP] [SEAL]

DESTINATAIRE PARQUET DE NANTERRE		RESERVE AU PARQUET
REPUBLIQUE FRANCAISE MINISTRE DE L'INTERIEUR DIRECTION GENERALE DE LA POLICE NATIONALE	**PROCES VERBAL** L'an deux mille sept, le premier février à dix heures quarante Nous, Cindie, RONDEAU GARDIE DE LA PAIX en fonction RUEIL MALMAISON	
Contraventions P.V.: 2006 0334915 AFFAIRE/GOODYEAR DUNLOP TIRES FRANCE NOTIFICATION ET REMISE D'ACTE JUDICIAIRE OBJET/AUDITION DE NONAIN GUILLAUME, DIRECTEUR JURIDIQUE DE LA SOCIETE	Agent de Police Judiciaire en résidence RUEIL MALMAISON –Etant au service, – –Agissant conformément aux instructions reçues de Monsieur CHAMOULAID Bertrand, Commissaire de Police, chargé de la circonscription de RUEIL MALMAISON,– –En exécution des instructions de la pièce parquet ci-jointe,– –Avons fait comparaître devant nous Monsieur NONAIN Guillaume demeurant 8 rue Lionel Terray téléphone	

VU et TRANSMIS

Le 5 Feb 2007
[SEAL]

Le
Le Commissaire
Chas de Service

01/47/76/24/09, et lui avons déclaré ce qui suit:–
–Sur instructions de Monsieur Le Procureur de la République du Tribunal de Grande Instance de NANTERRE, nous vous notifions une remise d'acte judiciaire en provenance de l'étranger: LES ETATS UNIS.–

L'AGENT DE POLICE JUDICIAIRE

–De meme suite, –
–L'intéressé nous declare:–
–"Cette remise d'acte judiciaire s'applique bien à GOODYEAR DUNLOP TIRES FRANCE, SA, 8 rue Lionel Terray 92500 RUEIL MALMAISON concernant le dossier numéro 05 CVS 1922.–
–J'en prends acte et je constate que vous me remettez l'acte qui s'y a rapporte.–
–Je vous en donne décharge en signant le présent.–
–Cet acte est une citation à comparaître dans une affaire civile".–

SIGNATURE DE
L'INTERESSE
Pour valoir de Notification

L'AGENT DE POLICE
JUDICIAIRE

–Dont acte clos pour être transmis à Monsieur le Procureur de la République près le Tribunal de Grande Instance de NANTERRE.–

ETAT DE CAROLINE DU NORD *Dossier N°* 05 CVS 1922

Comté: ONSLOW Dans la Cour de Justice générale
District X Division de la Cour Supreme

Nom de la Partie demanderesse
EDGAR D. BROWN et PAMELA BROWN, Co-curateurs de la SUCCESSION DE JULIAN DAVID BROWN, et KAREN M. HELMS, Curatrice de la SUCCESSION DE MATIHEW M. HELMS,
CONTRE
ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR LASTIKLERI T.A.S. et GOODYEAR DUNLOP TIRES FRANCE SA

CITATION À COMPARAÎTRE DANS UNE AFFAIRE CIVILE

G.S. 1A-1. Règles 3, 4
☐ Citations à comparaître de remplacement
Date d'émission de la dernière citation à comparaître

Adressé à chacune des Parties défenderesses designees ci-dessous:

Nom et adresse de la Partie défenderesse N° 1
Goodyear SA

Nom et adresse de la Partie défenderesse N° 2

Aux bons soins de: Arthur
de Bok
Président du Conseil
d'administration
Avenue Gordon Smith
L-7750 Colmar-Berg
Luxembourg
Un procès civil est intenté contre vous:

Vous êtes notifié de comparaître et de répondre à la plainte de la partie demanderesse comme suit:

1. Signifiez une copie de votre réponse écrite à cette plainte à l'avocat de la partie demanderesse dans un délai de trente (30) jours après reception de la signification. Vous pouvez signifier votre réponse en livrant une copie à l'avocat ou en l'envoyant par la poste à la dernière adresse connue de la partie demanderesse,et
2. Déposez, l'exemplaire original de la réponse écrite aurprès du Greffe de la Cour supérieure du comté indiqué ci-dessous.

Si vous manquez de répondre à la plainte, la partie demanderesse demandera à la Cour qu'elle lui accorde la reparation demandée dans la plainte.

Nom et adresse de l'avocat
de la partie demanderesse
(à défaut, adresse de la
partie demanderesse)
David F. Kirby
Kirby & Holt, LLP
P.O. Box 31665
Raleigh, Caroline du Nord
27622

Date d'émission 17/04/06
Heure: 14h06
Signature //Signaure//
X CSC adjoint Aide CSC
Greffe de la Cour

supérieure

AVAL:

Cette citation à comparaître fut initialement émise à la date indiquée ci-dessus et fut retournée sans avoir été signifiée. Sur demande de la partie demanderesse, la périods pendant laquelle cette citation à comparaître doit être signifiée est prolongée de trente (30) jours.

Date d'aval
Heure:

Signature //Signature//
X CSC adjoint Aide CSC
Greffe de la Cour supérieure

NOTE A L'ATTENTION DES PARTIES:

De nombreux Comtés possèdent des programmes d'ARBITRAGE OBLIGATOIRE dans lesquels la plupart des affaires dont le montant dispute est de 15,000 dollars ou moins sont entendus par un arbitre avant le process. Les parties seront notifiées si cette affaire est affectèe à un arbitrage obligatoire et, dans ce cas, de la procédure à suivre.

STIPULATION

The parties hereto stipulate and agree that a copy of the Amended Complaint translated into French, and a copy of the Amended Complaint in English, were attached to the foregoing subpoena when served, but that said copies of the Amended Complaint are not necessary for an understanding of the issues on appeal and are therefore omitted from the Record on Appeal.

NORTH CAROLINA

ONSLOW COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
05 CVS 1922

EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS

Plaintiffs,

v.

ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA.,

Defendants.

AMENDED COMPLAINT (JURY TRIAL DEMANDED)

FILED
2006 APR 17 PM 2:01
ONSLOW CO. C.S.C.
BY

Plaintiffs, complaining of defendants, allege and say:

PARTIES

1. Julian David Brown (hereinafter "Julian"), a citizen and resident of Charlotte, Mecklenburg County, North Carolina, was killed as a result of a bus accident that occurred on April 18, 2004, near Mitry-Mory, France. He was age 13 at the time of his death on April 26, 2004.

2. Pamela Brown and Edgar D. Brown are the parents of Julian Brown. Pamela and Edgar Brown were appointed co-administrators of Julian's estate by the Clerk of Superior Court of Mecklenburg County. They are acting as co-administrators in the institution of this wrongful death action, which is being filed within two years of Julian's death.

3. Matthew McCoy Helms (hereinafter "Matthew"), a citizen and resident of Jacksonville, Onslow County, North Carolina, was killed in a bus accident that occurred on April 18,2004, near Mitry-Mory, France. He was age 13 at the time of his death.

4. Karen M. Helms and David Helms are the parents of Matthew Helms. Karen was appointed administratrix of Matthew's estate by the Clerk of Superior Court of Onslow County. She is acting as administratrix in the institution of this wrongful death action, which is being filed within two years of Matthew's death.

5. Defendant Eric Meter (hereinafter "Mr. Meter"), is a citizen and resident of California.

6. French Soccer Network is a California company owned and operated by Eric Meter. Upon information and belief, Eric Meter does business as

the French Soccer Network, an unincorporated business, and is the principal and sole owner of French Soccer Network.

7. European Soccer Network is a California company owned and operated by Eric Meter. Upon information and belief, Eric Meter does business as European Soccer Network, an unincorporated business, and is the principal and sole owner of European Soccer Network.

8. Defendant North Carolina Youth Soccer Association, Inc. (hereinafter "NCYSA") is a North Carolina corporation that is authorized to and does business in the State of North Carolina.

9. Defendant The Goodyear Tire & Rubber Company is an Ohio corporation with its principal place of business in Akron, Ohio. The Goodyear Tire & Rubber Company is duly organized and existing under the laws of the State of Ohio and it transacts business throughout the world, including in the State of North Carolina.

10. Defendant Goodyear Dunlop Tires Europe B.V. is a Belgium corporation with its principal place of business in Brussels, Belgium.

11. Defendant Goodyear Luxembourg Tires SA is a Luxembourg corporation with its principal place of business in Colmar-Berg, Luxembourg.

12. Defendant Goodyear SA is a Luxembourg corporation with its principal place of business in Colmar-Berg, Luxembourg.

13. Defendant Goodyear Dunlop Tires France SA is a French corporation with its principal place of business in France.

14. Defendant Goodyear Lastikleri T.A.S. is a Turkish corporation with its principal place of business in Turkey.

15. Upon information and belief, the Defendant The Goodyear Tire & Rubber Company is the parent and controlling corporation of defendants Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA, which are subsidiary corporations.

16. Upon information and belief, at all times alleged, a principal/agency relationship existed between defendant The Goodyear Tire & Rubber Company and the defendant subsidiary Goodyear companies, Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA, with defendant The Goodyear Tire & Rubber Company acting as principal and the subsidiary Goodyear companies acting as agents

17. .Defendants The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA (hereinafter "The Goodyear defendants") are in the business of designing, testing, manufacturing and selling tires for automobiles, trucks and buses that are marketed, sold and used throughout the world, including Europe, the United States and North Carolina.

BACKGROUND

18. In April, 2004, Julian Brown and Matthew Helms traveled to France with other North Carolina Youth Soccer Association soccer players, all boys age

14 and under who were considered the best young players in this age category from North Carolina.

19. The trip was arranged as a joint venture between the North Carolina Youth Soccer Association, Inc., the French Soccer Network, the European Soccer Network, and Eric Meter, a principal of the French Soccer Network and the European Soccer Network.

20. The players were accompanied by their coaches, a trainer, an NCYSA official and some parents.

21. The boys had traveled to France on a group trip coordinated by the NCYSA, Eric Meter, the French Soccer Network and the European Soccer Network, to participate in a European soccer tournament. Their parents paid NCYSA, which arranged tournament games, transportation, food and lodging through its agent, Eric Meter.

22. Upon information and belief, the NCYSA coaches, trainers and officials were provided gratuitous travel to France by Eric Meter, the French Soccer Network and the European Soccer Network in exchange for the NCYSA utilizing their services in organizing the trip.

23. On the morning of April 18, 2004, at approximately 9:00 a.m. Central European Time (CET), Julian Brown and Matthew Helms were passengers on a bus that was carrying the team from Nantes, France, to the Charles DeGaulle Airport in Paris for the return trip home to North Carolina.

24. Upon information and belief, Eric Meter made all travel and transportation arrangements for the NCYSA boys soccer group during their trip to France.

25. Eric Meter, the French Soccer Network and the European Soccer Network, acting as tour promoters in the European Union, had a fiduciary duty to the children traveling under their care and owed those children the highest duty of care to ensure they traveled safely while in a foreign country.

26. Upon information and belief, Eric Meter, the French Soccer Network and the European Soccer Network were actively engaged in solicitation or services within North Carolina at or around the time of these events. Eric Meter, the French Soccer Network and the European Soccer Network purposefully availed themselves of the economic market in North Carolina, repeatedly soliciting and conducting business with North Carolina groups and individuals.

27. Upon information and belief, Eric Meter was acting as an agent of the NCYSA when making travel and transportation arrangements on its behalf for this trip.

28. The bus on which the NCYSA group was traveling was owned by Voyages de la Baie, a French corporation, and chartered by Eric Meter.

29. At the time of these events on April 18, 2004, Philippe Daniel ("Mr. Daniel") was driving the bus. Upon information and belief, Mr. Daniel was not an employee of Voyages de la Baie, but had been hired directly by Eric Meter, NCYSA, the European Soccer Network and the French Soccer Network to drive the bus transporting the NCYSA group.

30. Upon information and belief, at all times relevant to this complaint, Philippe Daniel was operating the bus as the employee and/or agent of

Eric Meter, the French Soccer Network, the European Soccer Network and the NCYSA.

31. At the time of these events, Mr. Daniel was acting as an agent of Eric Meter, the French Soccer Network, the European Soccer Network and NCYSA. Upon information and belief, Mr. Daniels' full time employment was as a city bus driver for the city of Nantes; he was not accustomed to driving passengers to the airport in France, was not familiar with this highway, and had never driven a commercial bus along the route on which these events took place.

32. On April 18,2004, at approximately 9:15 a.m. CET, the bus on which the team was traveling reached a ramp and curve on autoroute Al04 near the N2 autoroute intersection marked by kilometer plate marker 9.100.

33. Upon information and belief, as he entered this section of the highway, Mr. Daniel was engaged in an animated and loud conversation with Eric Meter and a third person that distracted his attention from his driving and the roadway.

34. Upon entering a curve in the road, the bus went out of control. The bus skidded sideways and hit a low, concrete separating wall. It then overturned onto its left side while returning back onto the roadway and slid until it came to rest off the roadway in a field.

35. Upon information and belief, the bend at which the accident occurred is known to be highly accident-prone and warning signs were posted in advance of the curve that limit the speed in this area to 70 km/hr.

36. Upon information and belief, examination of the tachograph disk taken from the bus by the French officials assigned to investigate the accident revealed that at the time of the entrance of the bus into the curve, the bus was traveling about 100 km/hr.

37. Upon information and belief, at the time of the events set out above, the roadway on which the bus was traveling was wet from heavy rain that fell shortly before and rain falling at the time the bus approached the curve, substantially reducing the traction of the bus' tires on the highway.

38. Upon information and belief, Julian was seated toward the back of the bus. When the bus overturned and went off the highway, Julian was thrown from the vehicle and trapped underneath it. He suffered life-threatening injuries as a result of the crash, including two broken legs, a broken jaw, severe pelvic fractures, internal bleeding and severe head trauma.

39. Julian was transported by ambulance to a hospital in Paris for treatment. Julian underwent surgery on his legs, but remained in a coma and on life support throughout his hospitalization in France. He never regained consciousness.

40. Julian was eventually found to be clinically brain dead. His parents and older sister had traveled to France from the United States to be with him. No brain response was detected after testing on April 26, 2004. All life support was removed and he died shortly thereafter.

41. Matthew Helms, who was also seated in the rear portion of the bus, suffered severe upper body crush injuries and lacerations in the crash. He died at the scene. His father David traveled from the

United States to France to identify his body and return Matthew to the United States for burial.

42. Upon information and belief, at the time of the accident, the bus was equipped with tires designed, manufactured and sold by The Goodyear Tire & Rubber Company, and its subsidiaries Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA.

43. Upon information and belief, as Mr. Daniel attempted to maintain control of the bus after entering the curve at an excessive speed, the outside back rear tire failed, causing the bus to go further out of control.

44. An examination of the tires on the bus conducted after the wreck revealed that the outside left rear tire was defective in that its plies separated, causing the tire to fail while the bus was traveling through the curve.

45. As a result of the crash, both Julian David Brown and Matthew McCoy Helms were killed.

46. As a result of the loss of control, overturning and crashing of the Voyages de la Baie bus, both Julian David Brown and Matthew McCoy Helms were killed.

FIRST CLAIM FOR RELIEF
(Negligence of Philippe Daniel imputed to Eric Meter. French Soccer Network, European Soccer Network and the N.C. Youth Soccer Association)

47. Plaintiff incorporates paragraphs 1 through 46 of this complaint as if fully set forth herein.

48. At all times relevant to this complaint, Philippe Daniel was an employee and agent of Eric

Meter, the French Soccer Network, the European Soccer Network and the N.C. Youth Soccer Association, Inc.

49. Philippe Daniel, and though him Eric Meter, the French Soccer Network, the European Soccer Network and the N.C. Youth Soccer Association, Inc., were negligent in that Philippe Daniel:

a. Operated a vehicle without maintaining a proper lookout.
b. Operated a vehicle without maintaining proper control of it.
c. Operated a vehicle in excess of the posted speed limit.
d. Operated a vehicle in excess of the legal speed limit.
e. Operated a vehicle at a speed greater than was reasonable and prudent under the conditions then existing
f. Failed to reduce his speed to avoid an accident.
g. Failed to operate his vehicle in a safe and reasonable manner under the circumstances and conditions then existing.
h. Operated the bus carelessly and heedlessly and in gross, willful and wanton disregard of the rights and safety of others.
i. Operated a vehicle upon the highways without due caution and circumspection and in a manner so as to endanger or be likely to endanger persons or property.

50. As a direct and proximate result of the defendants' negligence and negligence per se as set forth herein, Julian Brown and Matthew Helms were killed.

51. As a direct and proximate result of the defendants' negligence and negligence per se as s

forth herein, the estates of Julian Brown and Matthew Helms have incurred funeral and burial expenses.

52. As a direct and proximate result of the defendants' negligence as set forth herein, the estate of Julian Brown incurred medical expenses.

53. As a direct and proximate result of the defendants' negligence, Julian Brown's parents have been deprived of his services, protection, care, assistance, net income, companionship, comfort, guidance, kindly offices and advice.

54. As a direct and proximate result of the defendants' negligence, Matthew Helms' parents have been deprived of his services, protection, care, assistance, net income, companionship, comfort, guidance, kindly offices and advice.

55. Pamela Brown and Edgar D. Brown are entitled to recover in their capacities as co-administrators of the estate of Julian Brown from the defendants all damages caused by their negligence, including all such damages set forth in N.C.G.S. § 28A-18-2 and in an amount in excess of $10,000.00.

56. Karen Helms is entitled to recover in her capacity as administratrix of the estate of Matthew Helms from the defendants all damages caused by their negligence, including all such damages set forth in N.C.G.S. § 28A-18-2 and in an amount in excess of $10,000.00.

SECOND CLAIM FOR RELIEF
(Negligence of Eric Meter, French Soccer Network, European Soccer Network and N.C. Youth Soccer Association, Inc.)

57. Plaintiff incorporates paragraphs 1 through 56 of this complaint as if fully set forth herein.

58. At all times, Eric Meter was a principal, owner and agent of French Soccer Network and European Soccer Network.

59. At all times, Eric Meter was the agent and/or employee of N.C. Youth Soccer Association, Inc.

60. At all relevant times, Eric Meter, the French Soccer Network and the European Soccer Network, owed a fiduciary duty to the children under their care and owed those children the highest duty of care to ensure they traveled safely while in a foreign country.

61. Just before the crash, Eric Meter engaged the bus driver in an animated conversation, distracting the driver from his duties to observe the road and slow down for the upcoming curve.

62. Eric Meter observed, or should have observed, that the driver was operating too fast for the conditions and driving too fast on the rain-slickened road, but Mr. Meter failed to remonstrate with the driver for his excessive speed.

63. Eric Meter himself selected the driver for the trip. The driver Mr. Meter selected did not have experience in driving buses on highways and was unfamiliar with the route he was to take to the airport.

64. Eric Meter, and through him the French Soccer Network, the European Soccer Network and the N.C. Youth Soccer Association, were negligent in that Eric Meter:

a. Distracted the bus driver by engaging him in an animated conversation just before the crash, keeping the driver from his duty to observe the road and slow for the upcoming curve.

b. Observed the bus driver driving too fast for the conditions then existing yet did not remonstrate or warn the driver to slow down.

c. Observed the bus driver failing to keep a proper lookout, and failed to remonstrate or warn the driver to watch where he was going.
d. Observed the bus driver failing to slow down to avoid an accident, and failed to remonstrate or warn the driver to slow down.
e. Observed the driver exceeding the speed limit for buses, yet did not remonstrate or warn the driver to slow down.
f. Engaged a driver for a highway trip when that driver was unfamiliar with the road and the route and lacked experience in driving on highways.
g. In such other ways as will be shown through discovery and at trial.

65. As a direct and proximate result of the defendants' negligence and negligence per se as set forth herein, Julian Brown and Matthew Helms were killed.

66. As a direct and proximate result of the defendants' negligence and negligence per se as set forth herein, the estates of Julian Brown and Matthew Helms have incurred funeral. and burial expenses.

67. As a direct and proximate result of the defendants' negligence as set forth herein, the estate of Julian Brown incurred medical expenses.

68. As a direct and proximate result of the defendants' negligence, Julian Brown's parents have been deprived of his services, protection, care, assistance, net income, companionship, comfort, guidance, kindly offices and advice.

69. As a direct and proximate result of the defendants' negligence, Matthew Helms' parents have been deprived of his services, protection, care,

assistance, net income, companionship, comfort, guidance, kindly offices and advice.

70. Pamela Brown and Edgar D. Brown are entitled to recover in their capacities as co-administrators of the estate of Julian Brown from the defendants all damages caused by their negligence, including all such damages set forth in N.C.G.S.§ 28A-18-2 and in an amount in excess of $10,000.00

71. .Karen Helms is entitled to recover in her capacity as administratrix of the estate of Matthew Helms from the defendants all damages caused by their negligence, including all such damages set forth in N.C.G.S. § 28A-18-2 and in an amount in excess of $10,000.00.

THIRD CLAIM FOR RELIEF
(Joint Venture of N.C. Youth Soccer Association. Inc., Eric Meter. the French Soccer Network and the European Soccer Network)

72. The allegations stated in paragraphs 1 through 71 of this complaint are realleged herein and incorporated by reference.

73. Upon information and belief, the N.C. Youth Soccer Association, Inc., Eric Meter, the French Soccer Network and the European Soccer Network were engaged in a joint venture to promote American soccer in Europe, expose North Carolina players to the high level soccer play in Europe and send a N.C. Youth Soccer Association team, including N.C. Youth Soccer Association officials, to France.

74. As a member of the joint venture, all of those involved in the joint venture are liable for the negligence of their fellow joint venturers.

75. Eric Meter, and through him the N.C. Youth Soccer Association, the European Soccer Network

and the French Soccer Network were negligent in that Eric Meter:.

a. Distracted the bus driver by engaging him in an animated conversation just before the crash, keeping the driver from his duty to observe the road and slow for the upcoming curve.

b. Observed the bus driver driving too fast for the conditions then existing yet did not remonstrate or warn the driver to slow down.

c. Observed the bus driver failing to keep a proper lookout, and failed to remonstrate or warn the driver to watch where he was going.

d. Observed the bus driver failing to slow down to avoid an accident, and failed to remonstrate or warn the driver to slow down.

e. Observed the driver exceeding the speed limit for buses, yet did not remonstrate or warn the driver to slow down.

f. Engaged a driver for a highway trip when that driver was unfamiliar with the road and the route and lacked experience in driving on highways.

g. In such other ways as will be shown through discovery and at trial.

76. Eric Meter, the French Soccer Network, the European Soccer Network and the N.C. Youth Soccer Association, Inc., were further negligent in that they employed Philippe Daniel as their agent and employee and Mr. Daniel:

a. Operated a vehicle without maintaining a proper lookout.

b. Operated a vehicle without maintaining proper control of it.

c. Operated a vehicle in excess of the posted speed limit.

d. Operated a vehicle in excess of the legal speed limit.
e. Operated a vehicle at a speed greater than was reasonable and prudent under the conditions then existing
f. Failed to reduce his speed to avoid an accident.
g. Failed to operate his vehicle in a safe and reasonable manner under the circumstances and conditions then existing.
h. Operated the bus carelessly and heedlessly and, in gross, willful and wanton disregard of the rights and safety of others.
i. Operated a vehicle upon the highways without due caution and circumspection and in a manner so as to endanger or be likely to endanger persons or property.

77. As a direct and proximate result of the defendants' negligence and negligence per se as set forth herein, Julian Brown and Matthew Helms were killed.

78. As a direct and proximate result of the defendants' negligence and negligence per se as set forth herein, the estates of Julian Brown and Matthew Helms have incurred funeral and burial expenses.

79. As a direct and proximate result of the defendants' negligence as set forth herein, the estate of Julian Brown incurred medical expenses.

80. As a direct and proximate result of the defendants' negligence, Julian Brown's parents have been deprived of his services, protection, care, assistance, net income, companionship, comfort, guidance, kindly offices and advice.

81. As a direct and proximate result of the defendants' negligence, Matthew Helms' parents have been deprived of his services, protection, care,

assistance, net income, companionship, comfort, guidance, kindly offices and advice.

82. Pamela Brown and Edgar D. Brown are entitled to recover in their capacities as co-administrators of the estate of Julian Brown from the defendants all damages caused by their negligence, including all such damages set forth in N.C.G.S. § 28A-18-2 and in an amount in excess of $10,000.00.

83. Karen Helms is entitled to recover in her capacity as administratrix of the estate of Matthew Helms from the defendants all damages caused by their negligence, including all such damages set forth in N.C.G.S. § 28A-18-2 and in an amount in excess of $10,000.00.

FOURTH CLAIM FOR RELIEF

(Negligence of N.C. Youth Soccer Association. Inc.)

84. The allegations stated in paragraphs 1 through 83 of this complaint are realleged herein and incorporated by reference.

85. The parents of Julian Brown and Matthew Helms placed their sons under the protection, care and supervision of the NCYSA for their trip to France.

86. Julian Brown and Matthew Helms and their parents placed special faith, confidence and trust in the NCYSA.

87. NCYSA was acting in the position of guardian of Julian Brown and Matthew Helms on the trip to France, as these minor children were unaccompanied by their parents, and a fiduciary relationship existed between NCYSA and Julian Brown and Matthew Helms.

88. NCYSA, as tour promoters, organizers and guides of a trip involving travel to a foreign country, had a fiduciary duty to the children traveling under their care and owed these children the highest duty

of care to ensure they traveled safely while in a foreign country.

89. The NCYSA was involved in the planning and organizational aspects of the French soccer tour, including selection of vendors and affiliates, receipt of fees from parents, and making travel arrangements for the players and some members of their families.

90. The NCYSA had coaches and employees who participated in the trip who were the agents of the NCYSA.

91. The NCYSA is liable for the acts and omissions of its coaches, employees and agents on the trip.

92. The NCYSA was negligent, and violated its fiduciary responsibilities, in that its officers, employees, coaches and agents:

a. Failed to exercise due diligence in investigating the safety of land transportation and travel arrangements from Nantes to the Paris airport.

b. Failed to exercise due diligence in hiring a tour organizer that was financially and fiscally responsible, with sufficient financial standing, business status and experience.

c. Failed to exercise due diligence in choosing its travel arrangements and travel arrangement partner.

d. Failed to monitor the speed and driving of the bus driver.

e. Failed to remonstrate with the driver over his excessive speed for the
conditions, which included rain-slicked roads.

f. Engaged a driver who was inexperienced in highway driving for the task of transporting children to the airport.

g. In such other ways as will be shown through discovery and at trial.

93. As a direct and proximate result of the defendant's negligence as set forth herein, Julian Brown and Matthew Helms were killed.

94. As a direct and proximate result of the defendant's negligence and negligence per se as set forth herein, the estates of Julian Brown and Matthew Helms have incurred funeral and burial expenses.

95. As a direct and proximate result of the defendant's negligence as set forth herein, the estate of Julian Brown incurred medical expenses.

96. As a direct and proximate result of the defendant's negligence, Julian Brown's parents have been deprived of his services, protection, care, assistance, net income, companionship, comfort, guidance, kindly offices and advice.

97. As a direct and proximate result of the defendant's negligence, Matthew Helms' parents have been deprived of his services, protection, care, assistance, net income, companionship, comfort, guidance, kindly offices and advice.

98. Pamela Brown and Edgar D. Brown are entitled to recover in their capacities as co-administrators of the estate of Julian Brown from the defendant all damages caused by its negligence, including all such damages set forth in N.C.G.S. § 28A-18-2 and in an amount in excess of $10,000.00.

99. Karen Helms is entitled to recover in her capacity as administratrix of the estate of Matthew Helms from the defendant all damages caused by its negligence, including all such damages set forth in N.C.G.S. § 28A-18-2 and in an amount in excess of $10,000.00.

FIFTH CLAIM FOR RELIEF

(Negligent Design and Manufacture – The Goodyear Defendants)

100. The allegations stated in paragraphs 1 through 99 of this complaint are realleged herein and incorporated by reference.

101. The tire that ruptured was a GOODYEAR REGIONALE RHS 295/80 R 22.5 tire (the "Tire").

102. The Tire was designed for use on large, heavy vehicles, including buses. The tire was sold in France and installed on a bus that would be used for the transportation of numerous people. It was reasonably foreseeable to the Goodyear defendants that the tire would be used on a bus used for the transportation of large numbers of people.

103. The Tire was designed, manufactured, tested, inspected and sold by Defendants The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA.

104. The Goodyear defendants attempted to manufacture the tire in compliance with U.S. Department of Transportation regulations, in anticipation that the tire would be used worldwide, including in the United States and North Carolina.

105. The Goodyear defendants owed a duty to Matthew Helms and Julian Brown to use reasonable care in the design, construction, testing, and inspection of the Tire to avoid subjecting Matthew Helms and Julian Brown to an unreasonable risk of injury when the tire failed under normal use.

106. The Goodyear defendants failed to conform to this duty of reasonable design, manufacture, testing and inspection. The Goodyear

defendants designed and manufactured a tire of inferior design, strength and materials, which could not withstand reasonably foreseeable use. As a result, the plies of the tire separated and caused the tire to fail as the bus was traveling through the curve. The Goodyear defendants could have avoided the design and manufacturing defects by reasonable testing, inspection and use of the knowledge and resources available to them.

107. At all times during the design and manufacturing process, it was reasonably foreseeable that the Tire would be mounted on a bus and driven on a highway. However, The Goodyear Defendants' inferior design, manufacturing, testing and inspection of the Tire presented an unreasonable risk of injury to passengers in these circumstances.

108. At all times, Matthew Helms and Julian Brown were acting with due care and without negligence, on their part, and did not contribute to their own injuries.

109. As a direct and proximate result of the defendants' negligence as set forth herein, Julian Brown and Matthew Helms were killed.

110. As a direct and proximate result of the defendant's negligence as set forth herein, the estates of Julian Brown and Matthew Helms have incurred funeral and burial expenses.

111. As a direct and proximate result of the defendant's negligence as set forth herein, the estate of Julian Brown incurred medical expenses.

112. As a direct and proximate result of the defendant's negligence, Julian Brown's parents have been deprived of his services, protection, care, assistance, net income, companionship, comfort, guidance, kindly offices and advice.

113. As a direct and proximate result of the defendant's negligence, Matthew Helms' parents have been deprived of his services, protection, care, assistance, net income, companionship, comfort, guidance, kindly offices and advice.

114. Pamela Brown and Edgar D. Brown are entitled to recover in their capacities as co-administrators of the estate of Julian Brown from the defendants all damages caused by their negligence, including all such damages set forth in N.C.G.S. § 28A-18-2 and in an amount in excess of $10,000.00.

115. Karen Helms is entitled to recover in her capacity as administratrix of the estate of Matthew Helms from the defendants all damages caused by their negligence, including all such damages set forth in N.C.G.S. § 28A-18-2 and in an amount in excess of $10,000.00.

SIXTH CLAIM FOR RELIEF

(Failure to Warn – The Goodyear Defendants)

116. The allegations stated in paragraphs 1 through 115 of this complaint are realleged herein and incorporated by reference.

117. The tire that ruptured was placed into the stream of commerce in a defective and unreasonably dangerous condition. The defective design and manufacture of the tire was such that the belts would become detached from the rest of the tire.

118. The tire was installed on the vehicle without any substantial change in its condition and was in the same condition at the time of the injury to Matthew Helms and Julian Brown.

119. Use of the tire on a bus was a foreseeable use of the product. The Goodyear defendants owed a duty to Matthew Helms and Julian Brown to advise and warn them, and all

foreseeable users, of latent defective design problems of the Tire, which created an unreasonably dangerous condition, so that Matthew Helms and Julian Brown or any foreseeable user could avoid injuries. The Goodyear defendants breached their duties to Matthew Helms and Julian Brown in failing to advise of the latent design defects.

120. The Goodyear defendants sold the Tire with the knowledge, actual and constructive, of its design defects.

121. Upon information and belief, the Goodyear defendants acted with disregard for the rights of Matthew Helms and Julian Brown. Upon information and belief, the Goodyear defendants had actual and constructive knowledge of the defects in design and manufacturing, and failed to warn of those defects. These acts of the Goodyear defendants allowed the Tire to be used in a foreseeable manner which resulted in foreseeable fatal injuries to Plaintiffs Matthew Helms and Julian Brown.

122. As a direct and proximate result of the defendants' negligence as set forth herein, Julian Brown and Matthew Helms were killed.

123. As a direct and proximate result of the defendants' negligence as set forth herein, the estates of Julian Brown and Matthew Helms have incurred funeral and burial expenses.

124. As a direct and proximate result of the defendants' negligence as set forth herein, the estate of Julian Brown incurred medical expenses.

125. As a direct and proximate result of the defendants' negligence, Julian Brown's parents have been deprived of his services, protection, care, assistance, net income, companionship, comfort, guidance, kindly offices and advice.

126. As a direct and proximate result of the defendants' negligence, Matthew Helms' parents have been deprived of his services, protection, care, assistance, net income, companionship, comfort, guidance, kindly offices and advice.

127. Pamela Brown and Edgar D. Brown are entitled to recover in their capacities as co-administrators of the estate of Julian Brown from the defendants all damages caused by their negligence, including all such damages set forth in N.C.G.S. § 28A-18-2 and in an amount in excess of $10,000.00.

128. Karen Helms is entitled to recover in her capacity as administratrix of the estate of Matthew Helms from the defendants all damages caused by their negligence, including all such damages set forth in N.C.G.S. § 28A-18-2 and in an amount in excess of $10,000.00.

SEVENTH CLAIM FOR RELIEF

(Strict Liability – The Goodyear Defendants)

129. Paragraphs numbered 1 through 128 are incorporated herein by reference as though fully set forth.

130. The tire involved in this claim was placed into the stream of commerce by being sold in France, and was used in France on a bus licensed to operate in France.

131. France applies the doctrine of strict liability to products used in that country.

132. The Goodyear defendants are engaged in the business of designing and manufacturing tires for motor vehicles. The Goodyear defendants expected that their tires would be used by consumers without substantial change in the tires' condition.

133. The tires used on the day of the accident had been manufactured and designed by the

Goodyear defendants. The tires were in substantially the same condition as they had been when purchased and they were defective at the time the tires left the Goodyear defendants' control.

134. The tires were unreasonably dangerous to consumers in that their plies would separate. This separation caused the plies to become detached from the rest of the tire, causing foreseeable injuries to the vehicle's occupants. The accident involving the bus was not unusual or in any manner unforeseeable given the tires' design and manufacture and resulted in severe injury and death to the plaintiffs.

135. The unreasonably dangerous condition and defects in the tire were a direct and proximate cause of Matthew Helms' and Julian Brown's injuries and deaths as fully set forth above.

136. The Goodyear defendants are strictly liable to Matthew Helms and Julian Brown for their injuries.

137. As a direct and proximate result of the defendants' defective product as set forth herein, Julian Brown and Matthew Helms were killed.

138. As a direct and proximate result of the defendants' defective product as set forth herein, the estates of Julian Brown and Matthew Helms have incurred funeral and burial expenses.

139. As a direct and proximate result of the defendants' defective product as set forth herein, the estate of Julian Brown incurred medical expenses.

140. As a direct and proximate result of the defendants' defective product, Julian Brown's parents have been deprived of his services, protection, care, assistance, net income, companionship, comfort, guidance, kindly offices and advice.

141. As a direct and proximate result of the defendants' defective product, Matthew Helms' parents have been deprived of his services, protection, care, assistance, net income, companionship, comfort, guidance, kindly offices and advice.

142. Pamela Brown and Edgar D. Brown are entitled to recover in their capacities as co-administrators of the estate of Julian Brown from the defendants all damages caused by their defective product, including all such damages set forth in N.C.G.S. § 28A-18-2 and in an amount in excess of $10,000.00.

143. Karen Helms is entitled to recover in her capacity as administratrix of the estate of Matthew Helms from the defendants all damages caused by their defective product, including all such damages set forth in N.C.G.S. § 28A-18-2 and in an amount in excess of $10,000.00.

EIGHTH CLAIM FOR RELIEF
(Breach of Implied Warranty The Goodyear Defendants)

144. Paragraphs numbered 1 through 143 are incorporated herein by reference as though fully set forth.

145. At the time of the purchase and sale of the Tires, the Goodyear defendants impliedly warranted to all foreseeable users that the tires were merchantable and fit for the ordinary purpose for which motor vehicle tires are intended, namely, for use on passenger cars, buses and trucks.

146. The Goodyear defendants held themselves out to the public as possessing superior knowledge and skill in the design and manufacture of motor vehicle tires. Plaintiff Matthew Helms and Julian Brown, as a foreseeable user, relied on the

superior knowledge and skill of the Goodyear defendants when they agreed to become passengers in the vehicle.

147. Upon information and belief, the Goodyear defendants were notified of the breach of warranty within a reasonable time after discovering the breach and prior to filing this action.

148. As a result, the Goodyear defendants breached their implied warranty of merchantability of fitness for a particular purpose to Plaintiff Matthew Helms and Julian Brown. This breach directly and proximately caused Matthew Helms and Julian Brown to suffer catastrophic personal injuries resulting in their deaths.

149. As a direct and proximate result of the defendants' breach as set forth herein, the estates of Julian Brown and Matthew Helms have incurred funeral and burial expenses.

150. As a direct and proximate result of the defendants' breach as set forth herein, the estate of Julian Brown incurred medical expenses.

151. As a direct and proximate result of the defendants' breach, Julian Brown's parents have been deprived of his services, protection, care, assistance, net income, companionship, comfort, guidance, kindly offices and advice.

152. As a direct and proximate result of the defendants' breach, Matthew Helms' parents have been deprived of his services, protection, care, assistance, net income, companionship, comfort, guidance, kindly offices and advice.

153. Pamela Brown and Edgar D. Brown are entitled to recover in their capacities as co-administrators of the estate of Julian Brown from the defendants all damages caused by their breach,

including all such damages set forth in N.C.G.S. § 28A18- 2 and in an amount in excess of $10,000.00.

154. Karen Helms is entitled to recover in her capacity as administratrix of the estate of Matthew Helms from the defendants all damages caused by their breach, including all such damages set forth in N.C.G.S. § 28A-18-2 and in an amount in excess of $10,000.00.

NINTH CLAIM FOR RELIEF
(Breach of Express Warranty The Goodyear Defendants)

155. Paragraphs numbered 1 through 154 are incorporated herein by reference as though fully set forth.

156. At the time of the purchase and sale of the Tire, the Goodyear defendants expressly warranted to the purchaser that the tires were capable of being driven at highway speed.

157. On April 18,2004, the bus was being driven at highway speed when its left rear outside tire failed because of separation of the plies.

158. The Tire was not capable of being driven at highway speeds and the Goodyear defendants' express warranty to the purchaser that it was so capable was breached.

159. At all times herein, the express warranty that the tire was capable of being driven at highway speeds was the basis for their purchase for the bus by the purchaser.

160. Upon information and belief, the Goodyear defendants were notified of the breach of warranty within a reasonable time of discovering the breach and prior to filing this action.

161. As a direct and proximate result of the defendants' breach as set forth herein, the estates of

Julian Brown and Matthew Helms have incurred funeral and burial expenses.

162. As a direct and proximate result of the defendants' breach as set forth herein, the estate of Julian Brown incurred medical expenses.

163. As a direct and proximate result of the defendants' breach, Julian Brown's parents have been deprived of his services, protection, care, assistance, net income, companionship, comfort, guidance, kindly offices and advice.

164. As a direct and proximate result of the defendants' breach, Matthew Helms' parents have been deprived of his services, protection, care, assistance, net income, companionship, comfort, guidance, kindly offices and advice.

165. Pamela Brown and Edgar D. Brown are entitled to recover in their capacities as co-administrators of the estate of Julian Brown from the defendants all damages caused by their breach, including all such damages set forth in N.C.G.S. § 28A18-2 and in an amount in excess of $10,000.00.

166. Karen Helms is entitled to recover in her capacity as administratrix of the estate of Matthew Helms from the defendants all damages caused by their breach, including all such damages set forth in N.C.G.S. § 28A-18-2 and in an amount in excess of $10,000.00.

WHEREFORE, plaintiffs pray the Court as follows:

1. That Plaintiffs Pamela Brown and Edgar D. Brown recover in their capacity as co-Administrators of the Estate of Julian Brown from the defendants,

jointly and severally, compensatory damages in an amount in excess of $10,000.00.

2. That Plaintiff Karen Helms recover in her capacity as Administratrix of the Estate of Matthew Helms from the defendants, jointly and severally, compensatory damages in an amount in excess of $10,000.00.

3. That the cost of this action, including pre-judgment interest, be taxed against the defendants.

4. For a trial by jury.

5. For such other and further relief as the court deems just and proper.

This the 13th day of April, 2006.

KIRBY & HOLT, L.L.P.
/s/
David F. Kirby
Laurie G. Armstrong
Attorneys for Plaintiffs
P.O. Box 31665
Raleigh, NC 27622
(919) 881-2111

NORTH CAROLINA ONSLOW COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 05 CVS 1922
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS Plaintiffs, v. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA., Defendants.	**DEFENDANT GOODYEAR LUXEMBOURG TIRES SA's MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

NOW COMES Defendant Goodyear Luxembourg Tires SA, through counsel and pursuant to Rule 12(b)(2) of the North Carolina Rules of Civil Procedure, and N.C.G.S. § 1-75.4, and hereby respectfully moves the Court to dismiss the Amended Complaint against it on the grounds of lack of personal jurisdiction. In support of this Motion, Goodyear Luxembourg Tires SA shows unto the court as follows:

Goodyear Luxembourg Tires SA is a foreign corporation lacking sufficient contacts with the State of North Carolina to support the exercise of personal jurisdiction over it under North Carolina law, and the exercise of personal jurisdiction over Goodyear Luxembourg Tires SA would violate due process of law. In support of this Motion, Goodyear Luxembourg Tires SA submits the affidavit of Hermann Lange, attached hereto as Exhibit A.

WHEREFORE, Goodyear Luxembourg Tires SA respectfully prays that its Motion to Dismiss be granted and that the Amended Complaint against Goodyear Luxembourg Tires SA be dismissed with prejudice.

This the 6th day of March, 2007.

/s/
WILLIAM K. DAVIS
State Bar No. 1117

/s/
CHARLOT F. WOOD
State Bar No. 16899

/s/
KEVIN G. WILLIAMS

State Bar No. 25760
Attorney for Defendants
The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA

OF COUNSEL:
BELL, DAVIS & PITT, P.A.
P.O. Box 21029
Winston-Salem, NC 27120-1029
Telephone: (336) 722-3700
Facsimile: (336) 714-4101

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing Motion to Dismiss for Lack of Personal Jurisdiction in the above captioned matter upon all other parties to this cause by:

hand delivering a copy hereof, properly addressed to the parties listed hereinbelow:

or by

X depositing a copy hereof in a first class postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, properly addressed to the parties listed hereinbelow.

This the 6th day of March, 2007.

/s/
CHARLOT F. WOOD
State Bar No. 16899

OF COUNSEL:
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STATE OF NORTH CAROLINA ONSLOW COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 05 CVS 1922
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS Plaintiffs, vs. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA.,	**AFFIDAVIT OF HERMAN LANGE**

Defendants.)

The undersigned, deposes and says:

1. I, Hermann Lange, am Finance Director of Goodyear Luxembourg Tires SA. I am over twenty-one years of age and am competent to make this affidavit. The statements herein are within my personal knowledge, and they are true and correct.

2. Goodyear Luxembourg Tires SA is a corporation organized and existing under the laws of The Grand Duchy of Luxembourg, with its principal place of business in Colmar-Berg.

3. Goodyear Luxembourg Tires SA is in the business of manufacturing, distribution and sale oftires.

4. 4. Goodyear Luxembourg Tires SA is a non U.S. corportion.

5. To the best of my knowledge, Goodyear Luxembourg Tires SA does not currently conduct any business in North Carolina, nor has it conducted any business in North Carolina.

6. To the best of my knowledge; Goodyear Luxembourg Tires SA does not solicit business in North Carolina.

7. To the best of my knowledge, Goodyear Luxembourg Tires SA has not provided services in North Carolina.

8. To the best of my knowledge; Goodyear Luxembourg Tires SA has not manufactured or designed products in North Carolina.

EXHIBIT
A

9. To the best of my knowledge, Goodyear Luxembourg Tires SA has not sold products in North Carolina.

10. To the best of my knowledge, Goodyear Luxembourg Tires SA has not shipped its products, or any materials or things processed, serviced or manufactured by Goodyear Luxembourg Tires SA directly to third parties into North Carolina.

11. To the best of my knowledge, Goodyear Luxembourg Tires SA has not advertised or promoted its products in North Carolina.

12. To the best of my knowledge, Goodyear Luxembourg Tires SA has not been authorized or sought authorization to do business in North Carolina.

13. To the best of my knowledge, Goodyear Luxembourg Tires SA does not have a registered agent in North Carolina.

14. To the best of my knowledge Goodyear Luxembourg Tires SA has no place of business in North Carolina, nor has it ever had an office or business location, mailing address, or phone number in North Carolina.

15. To the best of my knowledge, Goodyear Luxembourg Tires SA has not had an employee in North Carolina.

16. To the best of my knowledge, Goodyear Luxembourg Tires SA has not had a sales representative in North Carolina.

17. To the best of my knowledge, Goodyear Luxembourg Tires SA has not been looking at entering into contracts in North Carolina.

18. To the best of my knowledge, Goodyear Luxembourg Tires. SA did not enter into any third party agreement to perform services in North Carolina.

19. To the best of my knowledge, Goodyear Luxembourg Tires SA bas not paid taxes in North Carolina.

20. To the best of my knowledge, Goodyear Luxembourg Tires SA has not been required to file a tax return in either the United States or in North Carolina.

21. To the best of my knowledge, Goodyear Luxembourg Tires SA has not had a bank account in North Carolina.

22. To the best of my knowledge, Goodyear Luxembourg Tires SA has not owned or leased any real property in North Carolina.

23. To the best of my knowledge, Goodyear Luxembourg Tires SA has not held any meeting of a board, or any other official meeting in North Carolina.

24. To the best of my knowledge, Goodyear Luxembourg Tires SA does not maintain books or records in North Carolina.

25. To the best of my knowledge, Goodyear Luxembourg Tires SA has not invoked jurisdiction of North Carolina Courts.

26. To the best of my knowledge, Goodyear has not consenting to jurisdiction in North Carolina Courts.

I, Hermann Lange, affirm that the foregoing is true and correct on April 18, 2004 (date of the

underlying accident) and valid from that date through the date of this affidavit.

I, Hermann Lange, affirm that the foregoing is true and correct on April 18, 2004 (date of the underlying accident) and valid from that date through the date of this affidavit.

/s/
Hermann Lange
Finance Director of
Goodyear Luxembourg
Tires SA

February 28, 2007

The undersigned, GRETHEN Léonie, notary public residing in Rambrouch (Grand-Duchy of Luxembourg), hereby certifies the authenticity pf the signature of Mr Hermann LANGE, apposed hereabove.

Rambrouch, 6th of March 2007

[SEAL]

STATE OF NORTH CAROLINA ONSLOW COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 05 CVS 1922
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS Plaintiffs, vs. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA., Defendants.	**DEFENDANT GOODYEAR LASTIKLERI, T.A.S.'s MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

NOW COMES Defendant Goodyear Lastikleri, T.A.S., through counsel and pursuant to Rule 12(b)(2) of the North Carolina Rules of Civil Procedure, and N.C.G.S. § 1-75.4, and hereby respectfully moves the Court to dismiss the Amended Complaint against it on the grounds of lack of personal jurisdiction. In support of this Motion, Goodyear Lastikleri, T.A.S. shows unto the court as follows:

Goodyear Lastikleri, T.A.S. is a foreign corporation lacking sufficient contacts with the State of North Carolina to support the exercise of personal jurisdiction over it under North Carolina law, and the exercise of personal jurisdiction over Goodyear Lastikleri, T.A.S. would violate due process of law. In support of this Motion, Goodyear Lastikleri, T.A.S. submits the affidavit of Ersin Ozkan and Korhan Ul, attached hereto as Exhibit A.

WHEREFORE, Goodyear Lastikleri, T.A.S. respectfully prays that its Motion to Dismiss be granted and that the Amended Complaint against Goodyear Lastikleri, T.A.S. be dismissed with prejudice. .

This the 6th day of March, 2007.

/s/
WILLIAM K. DAVIS
State Bar No. 1117

/s/
CHARLOT F. WOOD
State Bar No. 16899

/s/
KEVIN G. WILLIAMS

State Bar No. 25760
Attorney for Defendants
The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA

OF COUNSEL:
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P.O. Box 21029
Winston-Salem, NC 27120-1029
Telephone: (336) 722-3700
Facsimile: (336) 714-4101

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing Motion to Dismiss for Lack of Personal Jurisdiction in the above captioned matter upon all other parties to this cause by:

hand delivering a copy hereof, properly addressed to the parties listed hereinbelow:

or by

X depositing a copy hereof in a first class postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, properly addressed to the parties listed hereinbelow.

This the 6th day of March, 2007.

/s/
CHARLOT F. WOOD
State Bar No. 16899

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STATE OF NORTH CAROLINA ONSLOW COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 05 CVS 1922
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS Plaintiffs, vs. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA.,	[SEAL] **AFFIDAVIT OF ERSIN ÖZKAN AND KORHAN UL**

Defendants.)

The undersigned, deposes and says:

1. I, Ersin Özkan, am Sales and Marketing Director of Goodyear Lastikleri T.A.Ş. and I, Korhan UL, am Corporate Secretary of Goodyear Lastikleri T.A.S. We are over twenty-one years of age and are competent to make this affidavit. The statements herein are within our personal knowledge, and they are true and correct.

2. Goodyear Lastikleri T.A.Ş. is a corporation organized and existing under the laws of Turkey, with its registered office in Istanbul.

3. Goodyear Lastikleri T.A.Ş. is in the business of manufacture, distribution and sale of tires.

4. Goodyear Lastikleri T.A.Ş. is a non US corporation.

5. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. does not currently conduct any business in North Carolina, nor has it conducted any business in North Carolina.

6. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. does not solicit business in North Carolina.

7. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. has not provided services in North Carolina.

8. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. has not manufactured or designed products in North Carolina.

9. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. has not actively sold products in North Carolina.

EXHIBIT
A

10. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. has not shipped its products, or any materials or things processed, serviced or manufactured by Goodyear Lastikleri T.A.Ş. into North Carolina.

11. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. has not sent unsolicited bulk commercial electronic mail into or within North Carolina.

12. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. has not advertised or promoted its products in North Carolina.

13. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. has not been authorized or sought authorization to do business in North Carolina.

14. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. does not have a registered agent in North Carolina.

15. To the best of my knowledge Goodyear Lastikleri T.A.Ş. has no place of business in North Carolina, nor has it ever had an office or business location, mailing address, or phone number in North Carolina.

16. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. has not had an employee in North Carolina.

17. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. has not had a sales representative in North Carolina.

18. To the best of my knowledge, Goodyear Lasktikleri T.A.Ş. has entered contracts in North Carolina.

19. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. did not enter into agreement to perform services in North Carolina.

20. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. has not paid taxes in North Carolina.

21. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. has not been required to file a tax return in either the United States or in North Carolina.

22. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. has not had a bank account in North Carolina.

23. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. has not owned or leased any real property in North Carolina.

24. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. has not held any meeting of a board, or any other official meeting in North Carolina.

25. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. does not maintain books or records in North Carolina.

26. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. has not invoked the jurisdiction of North Carolina Courts.

27. To the best of my knowledge, Goodyear Lastikleri T.A.Ş. has not consented to jurisdiction in North Carolina Courts.

I, Ersin ÖZKAN and I, Korhan UL, affirm that the foregoing is true and correct

Ersin ÖZKAN	Korhan UL
Sales & Marketing Director	Corporate Secretary

Goodyear Lastikleri T.A.Ş.

Goodyear Lastikleri T.A.Ş.

28 February 2007
Date

[SEAL]

I hereby certify that the signatures below this declaration written in the persons' office located in Büyükdere Cad. Maslak Iş Merkezi N. 41 MASLAK-ISTANBUL belong to ERSIN ÖZKAN, son of ERGÜL and SANIYE, born in ISTANBUL on 04.08.1961 registered in City of ISTANBUL, Province of FATIH, HARAÇÇI MEHMET with volume no: 022/09, family rank no: 37 and rank no: according to the photographed Identification Card given by G.O. PAŞA Directorate of Registrar on 18.07.1990 for renewal, with record no: 84-183, serial no: Y03, 818534 and KORHAN UL, TR ID NO: 31810825828 son of NECDET and NERMIN, born in ADANA on 08.03.1951 registered in City of ISTANBUL, Province of FAITH, IBRAHIMÇAVUŞ with volume no: 0032, family rank no: 00531 and rank no: 0016 according to the photographed Identification Card given by KADIKÖY Directorate of Registrar on 02.05.2003 for renewal, with record no: 17814, serial no: D09, 349314 and they were subscribed in their office and before me. On this First day of March two thousand and seven. 01/03/2007.

SECOND NOTARY OF BEŞIKTAŞ
On behalf of BAHRIYE MERAL ÜSKÜL
HASIBE AKBAŞ CÖMERT

REFERENCE: It is understood from the signature circular certified by 2nd Notary of Beşiktaş under certification no: 9659 dated 31.05.2006 that ERSIN ÖZKAN is a Class A signatory, member of the board of Directors and Sales and Marketting Director and KORHAN UL is a Class B signatory of GOODYEAR

LASTIKLERI TÜRK ANONIM ŞIRKETI and therefore they are authorized to represent the company. NK. 79

Bu tercüme fotokopi/fakstan'dan aslina uygun olarak TÜRKÇE'den INGILIZCE'ye tarafindan çevrilmiştir.
Yeminil Tercüman
Umut Arikan

Işbu tercümenin noteriğimiz yemini tercümanu UMUT ARIKANtarafindan yapdiğini onaylanim.

I have translated the attached document in TURKISH to English

Certified Translator
Umut Arikan
[SEAL]

I hereby certify that attached document has been translated by UMUT ARIKAN, certified translator of our notary public.

TASDIK SERAL

(5 Ekim 1961 tarihli Lahey Sözleşmesi)
APOSTILLE
(Convention de La Haye du 5 Octobre 1961)
1-Ülke TÜRKIYE – LA TURQUIE
2-/s/ tarafindan imzalanmiştir.
3-Imzalayanin sifat Noter dir.
4-2-noter nin mühür/damgasini taşimaktadir
TASDIK
5-Besiktas Kaymakamligin'da
6-01-03-2007 göre
7-803 Kaymakam tarafindan
8-No. NIHAT NALBANT lie tarafindan
imzalanmiştir.
9-Mühür/Damge

[SEAL]

KUZEY CAROLINA EYALET ONSLOW ŞEHRI	)	ADLI MAHKEME TEMYIZ MAHKEMESI BÖLÜMÜ
JULIAN DAVID BROWN MÜLKÜNÜN Müşterek Idarecileri EDGAR D. BROWN ve PAMELA BROWN, ve MATTHEW M. HELMS MÜLKÜNÜN Yöneticisi KAREN M. HELMS, Davacilar,	)	05-CVS-1922 [SEAL]
ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA.,	)	**ERSIN ÖZKAN ve KORHAN UL'UN BEYANI**

Davacilar)

Aşağida imzaai bulunan kişi şu hususian beyan etmektedir:

1. Ben Ersin Özkan, Goodyear Lastikleri T.A.Ş. unvani şirketin Satiş ve Pazarlama Direktörü ve ben Korhan UL, Goodyear Lastilkeri TAS unvanit şirketin Kurum Sekreteri olarak yirmi bir yaşin üzerinde öiduğumuzu ve bu beyani verme ehliyetihe sahip olduğumuzu beyan ederiz. Bu ifadede yer alan beyanlar, kişisel bilgimiz dahilinde olup tam ve doğru mahiyettedirier.

2. Goodyear Lastikleri T.A.Ş. unvani şirket, Türkiye yasalanna göre kurulmuş ve faaliyette bulunmakta olup yasai merkezi Istanbul'da yerteşiktir.

3. Goodyear Lastikleri T.A.Ş. unvani şirket, lastik imalat, dağitim ve satiş işleri ile iştigal etmektedir,

4. Goodyear Lastikleri T.A.Ş. unvani şirket, bir ABD şirketi değildir

5. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket halihazirde Kuzey Carolina'da iş yapmamaktadir ne de geçinişte yapmiştir.

6. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket halihazirde Kuzey Carolina'da yapmayi düşünmemektedir.

7. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket halihazirde Kuzey Carolina'da hizmer vermemiştir.

8. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket halihazirde Kuzey Carolina'da ürün imalati veya tasanmi şleri ile iştigal etmemiştir.

9. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket halihazirde Kuzey Carolina'da aktif olarak ürün satiş faaliye hulunmsmiştir.

10. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket ürünierini, maizemelerini veya proseslediği, servis verdiği veye imal ettiği diğer unsrlari Kuzey Carolina'ya sevk etmemiştir.

11. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket edep edlimemiş toplu ticari postalae Kuzey Carolina'da dondnememiştir.

12. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket, Kuzey Carolina'da ürünlerinin reklamani veya promosyonunun yapmamiştir.

13. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket, Kuzey Carolina'da yapmak için yetki almamiş ne de böyle bir yetkiyi almak için girişimde bulunmamiştir.

14. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket, Kuzey Carolina'da tescilli bir acenteye sahip bulunmamaktadir.

15. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket, Kuzey Carolina'da bir iş yerine sahip değildir ne de geçmişte Kuzey Carolina'da bir Işyerine, posta adresine veya telefon numarasina sahip olmamiştir.

16. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket, Kuzey Carolina'da hiç bir personal calstimamiştir.

17. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket, Kuzey Carolina'da hiç bir satiş temsilcisi göreveiendirmemiştir.

18. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket, Kuzey Carolina'da hiç bir sözleşme akdetmemiştir.

19. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket, Kuzey Carolina'da hizmet vermek üzere hiç bir sözleşme akdetmemiştir.

20. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket, Kuzey Carolina'da vergi ödememiştir.

21. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirketen ne Birieşik Devietierde ne de Kuzey Carolina'da vergi beyannamesi vermesi gerekmemiştir.

22. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket, Kuzey Carolina'da bir banka hesabina sahip olmamiştir.

23. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket, Kuzey Carolina'da herhangi bir emiakin sahibi olmarmiş veya kiralamamiştir.

24. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket, Kuzey Carolina'da bir kurul toplantsi veya diğer bir resmi topianti düzeniememiştir.

25. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket, Kuzey Carolina'da defter veya kayit tutmamaktadir.

26. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket, Kuzey Carolina'da Mahkemelerine başvurmmamiştir.

27. Sahip olduğum bilgi kadanya , Goodyear Lastikleri T.A.Ş. unvanli şirket, Kuzey Carolina Mahkemelerinin yargi yetkisine nze göstermemiştir.

Ben Ersin ÖZKAN ve ben Korhan UL yukanda belirtilen hususlarn tam va doğru olduğunu teyit ederiz.

Ersin ÖZKAN	Korhan UL
Satiş & Pazariama Direktörü	Kurum Sekreteri
Goodyear Lastikleri T.A.Ş.	Goodyear Lastikleri T.A.Ş.
	28 February 2007
	Tarih

[SEAL]

BEŞIKTAŞ
IKINCI NOTERI
BAHRIYE MERAL ÜSKÜL
ORTABAHÇE CA.N. 17/2 B. TAŞ/tST.

0212/261-00-43/Fax:260-23-69

TÜRKIYE
CUMHURIYETI

Tarih:
01/03/2007
Sayfa: 4.1
Grup: A
Yevmiye No:

işbu beyan altindaki imzanin Şahis ve kimliği ibraz ettiği G.O.PAŞA Nüfus Müdürlüğünce yenileme nedeni ile 18.07.1990 tarih, 84-183 kaylt, Y03 seri ve 818534 sicil n marasi ile verilme fotoğrafli Nüfus Cüzdanina göre; iSTANBili, FATiH i1çesi, HARAÇÇI KARAMEHMET 022/09 cilt, 37 ai sira ve sira numaralarinda kayitli bulunan ERGÜL ile SANi oğlu iSTANBUL 04.08.1961 doğumlu ERSIN ÖZKAN ile KADIKBY Nüfus Müdürlüğünce yenilese nedeni ile, 02.05.2003 tarih 17814 kayit, D09 seri ve 349314 sicil numarasi ile veril fotoğrafli Nüfus Cüzdanina göre; iSTANBUL ili, FATiH ilçes iBRAHiMÇAVUŞ 0032 cilt, 00531 aile sira ve 0016 sira numar larinda kayitli bulunan NECDET ile NERMiN oğlu ADANA 08.03.1951 doğumlu 31810825828 T.C.Kimlik numarali, KORHA UL 'a ait olup okuyup kabulen işlerinin çokluğu nedeniyle daireye gelemediklerinden davet üzeri gidilen Büyükder cad. Maslak işmerkezi N.41 MASLAK/iSTANBUL adresinde maha1li de ve huzurumda imzaladiğini onaylarim. Ikibinyedi Yili Mart Ayinin bir'inci Günü. 01/03/2007

BEŞIKTAŞ IKINCI NOTERI
BAHRIYE MERAL ÜSKÜL

vekili başkatibe COMERT
[SEAL]

DAYANAK. Beşiktaş 2. noterliğinden 31.05.2006 tarih, 96 yevmiye no ile onaylanmiş imza sirkülerinde 1. derece im yetkili Yönetin kurulu üyesi ve Satiş ve Pazarlama Direktörü Genel sekreter olduğu görülen; KORHAN UL'un GOODYEAR LASTIKLERI TÜRK ANONIM SIRETi'ni temsile yetkili olduklari görüldü.NK.79

[SEAL]

TASDIK SERAL

(5 Ekim 1961 tarihli Lahey Sözleşmesi)
APOSTILLE
(Convention de La Haye du 5 Octobre 1961)
1-Ülke TÜRKIYE – LA TURQUIE
2-/s/ tarafından imzalanmiştir.
3-Imzalayanin sifat Noter dir.
4-2-noter nin mühür/damgasini taşimaktadir
TASDIK
5-Besiktas Kaymakamligin'da
6-01-03-2007 göre
7-803 Kaymakam tarafindan
8-No. NIHAT NALBANT lie tarafindan
imzalanmiştir.
9-Mühür/Damge

STATE OF NORTH CAROLINA ONSLOW COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS Plaintiffs, v. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA., Defendants.	05-CVS-1922 Filed: 9 March 07 **DEFENDANT GOODYEAR DUNLOP TIRES FRANCE SA's MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

NOW COMES Defendant Goodyear Dunlop Tires Europe B.V., through counsel and pursuant to Rule 12(b)(2) of the North Carolina Rules of Civil Procedure, and N.C.G.S. § 1-75.4, and hereby respectfully moves the Court to dismiss the Amended Complaint against it on the grounds' of lack of personal jurisdiction. In support of this Motion, Goodyear Dunlop Tires France SA shows unto the court as follows:

Goodyear Dunlop Tires France SA is a foreign corporation lacking sufficient contacts with the State of North Carolina to support the exercise of personal jurisdiction over it under North Carolina law, and the exercise of personal jurisdiction over Goodyear Dunlop Tires France SA would violate due process of law. In support of this Motion, Goodyear Dunlop Tires France SA submits the affidavit of Olivier Rousseau, attached hereto as Exhibit A.

WHEREFORE, Goodyear Dunlop Tires France SA respectfully prays that its Motion to Dismiss be granted and that the Amended Complaint against Goodyear Dunlop Tires France SA be dismissed with prejudice.

This the 6th day of March, 2007.

/s/
WILLIAM K. DAVIS
State Bar No. 1117

/s/
CHARLOT F. WOOD
State Bar No. 16899

/s/
KEVIN G. WILLIAMS
State Bar No. 25760
Attorney for Defendants
The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA

OF COUNSEL:
BELL, DAVIS & PITT, P.A.
P.O. Box 21029
Winston-Salem, NC 27120-1029
Telephone: (336) 722-3700
Facsimile: (336) 714-4101

STATE OF NORTH CAROLINA ONSLOW COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS Plaintiffs, vs. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA.,	05-CVS-1922 **AFFIDAVIT OF OLIVIER ROUSSEAU**

Defendants.)

The undersigned, first being duly sworn, deposes and says:

1. I, Olivier Rousseau, am the General Manager of Goodyear Dunlop Tires France S.A. I am over twenty-one years of age and am competent to make this affidavit. The statements herein are within my personal knowledge, and they are true and correct.

2. Goodyear Dunlop Tires France S.A. is a corporation organized and existing under the laws of France, with its principal place of business in Rueil Malmaison, France.

3. Goodyear Dunlop Tires France S.A. is in the business of the manufacture and distribution of tires.

4. Goodyear Dunlop Tires France S.A. is a foreign corporation, and it has no contacts whatsoever with the State of North Carolina.

5. Goodyear Dunlop Tires France S.A. does not currently conduct any business in North Carolina, nor has it ever conducted any business in North Carolina.

6. Goodyear Dunlop Tires France S.A. has never solicited any business in North Carolina.

7. Goodyear Dunlop Tires France S.A. has never provided any services in North Carolina.

8. Goodyear Dunlop Tires France S.A. has never manufactured or designed products in North Carolina.

9. Goodyear Dunlop Tires France S.A. has never sold products in North Carolina.

EXHIBIT
A

10. Goodyear Dunlop Tires France S.A. has never shipped its products, or any materials or things processed, serviced or manufactured by Goodyear Dunlop Tires France S.A. into North Carolina.

11. Goodyear Dunlop Tires France S.A. has never sent unsolicited bulk commercial electronic mail into or within North Carolina using a computer, computer network, or the computer services of an electronic mail service provider.

12. Goodyear Dunlop Tires France S.A. has never advertised or promoted its products in North Carolina.

13. Goodyear Dunlop Tires France S.A. has never been authorized or sought authorization to do business in North Carolina.

14. Goodyear Dunlop Tires France S.A. does not have a registered agent in North Carolina.

15. Goodyear Dunlop Tires France S.A. has no place of business in North Carolina, nor has it ever had an office or business location, mailing address, or phone number in North Carolina.

16. Goodyear Dunlop Tires France S.A. has never had an employee in North Carolina.

17. Goodyear Dunlop Tires France S.A. has never had a sales representative in North Carolina.

18. Goodyear Dunlop Tires France S.A. has never entered into a contract in North Carolina.

19. Goodyear Dunlop Tires France S.A. never entered into an agreement to perform services in North Carolina.

20. Goodyear Dunlop Tires France S.A. has never paid taxes in North Carolina.

21. Goodyear Dunlop Tires France S.A. has never been required to file a tax return in either the United States or in North Carolina.

22. Goodyear Dunlop Tires France S.A. has not had a bank account in North Carolina.

23. Goodyear Dunlop Tires France S.A. has never owned or leased any real property in North Carolina.

24. Goodyear Dunlop Tires France S.A. has never held any meeting of a board, or any other official meeting in North Carolina.

25. Goodyear Dunlop Tires France S.A. does not maintain books or records in North Carolina.

26. Goodyear Dunlop Tires France S.A. has never invoked the jurisdiction of North Carolina Courts.

27. Goodyear Dunlop Tires France S.A. has never consented to jurisdiction in North Carolina Courts.

	/s/
Vu pour certification matériale de le signature figurant ci-contre de Monsieur Rousseau Pas Ile Roman Fait a Paris, le 26 fevrier 2007 CHEUVREUX ET ASSOCIES NOTAIRES 77, Bd. Maleshrites 75008 Paris	Olivier Rousseau General Manager Goodyear Dunlop Tires France S.A. February .23 2007 Date

APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. *République française*
   Le present acte public
2. a été signé par Me. Bouges
3. agissant en qualité de Notaire
4. est revêtu du sceau/timbre de son etude

Attesté

5. à Paris
6. le 26 FEV. 2007
7. *par le Procureur general près la Cour d'appel d'*Paris
8. sous nº 17927
9. sceau Mme Teplier 10. Signature:

L'Apostille confirme seulement l'authenticité de la signature, du sceau ou timbre sur le document. Elle ne signifie pas que le contente du document es

[SEAL]

REQUEST TO CALENDAR and NOTICE OF HEARING

EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS (PLAINTIFF)	FILE NUMBER: 05 CVS 1922	ONSLOW COUNTY SUPERIOR COURT
vs.	COURT JURISDICTION:	DIST: ☐ SUP. ☒
ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR		

TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA., (DEFENDANT)		
WEEK YOU ARE REQUESTING	**March 26, 2007**	*(SUBJECT TO AVAILABLE COURT TIME)*

Meditation Orientation Date: **Calendar Call:**

DOMESTIC CASES ONLY (Check each block that applies)			
CHAMBER HEARING COURTROOM: **Every week* 4-H:	CUSTODY SUPPORT PSS	VISITATION ALIMONY ATTORNEY FEES	*EQUITABLE DISTR.* TRIAL PRETRIAL

*2nd, 3rd & 4th week 4-C:	DB&B	CONTEMPT	MOTION

DOMESTIC @2:00 P.M.: Courtroom>>	DIVORCE: SHOW CAUSE:	*GENERAL CIVIL* Courtroom>>	MOTION TRIAL:	X

IF YOU CHECKED MOTION ABOVE, WHAT TYPE OF MOTION(S)?:

(1) Defendants' Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA Motion to Dismiss for Lack of Personal Jurisdiction

(2) *DO YOU REQUIRE?*	RECORDING EQUIPMENT:	(3) *(DISTRICT)*	COURT REPORTER:	*(SUPERIOR)*

PLEASE INDICATE ANY OTHER SPECIAL CIRCUMSTANCE OR NEED:

CERTIFICATE OF SERVICE This is to certify that the undersigned has this date served this pleading upon all other parties to this cause by (X) depositing a copy enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive case and custody of the United States Postal Service, ( ) handing it to the attorney or to the party, leaving it at the attorney's office with a partner or employee, or ( ) sending it to the attorney's office by a confirmed telefacsimile transmittal for receipt by 5:00 P.M. Eastern Time on a regular business	PRINT OR TYPE YOUR NAME: STATE BAR NUMBER: SIGN YOUR NAME: YOUR ADDRESS: TELEPHONE NUMBER:	Charlot F. Wood 16899 /s/ BELL, DAVIS & PITT, P.A. P.O. Box 21029 Winston-Salem, NC 27120-1029 (336) 722-3700

day, as evidenced by a telefacsimile receipt confirmation, or ( ) having the Sheriff serve the parties. May 6, 2007					
DATE OF SERVICE	ARE YOU THE:		PLAINTIFF	X	DEFENDANT

The Goodyear Dunlop Tire & Rubber Company, Goodyear Dulop Tires EuropeB.V., Goodyear Luxembourg tires SA, Goodyear, SA, Goodyear Latikleri T.A.S., and Goodyear Dunlop Tires France SA

LIST BELOW THE NAMES AND ADDRESSES OF THOSE SERVED

NAME & ADDRESS:	David F. Kirby, Esq. William B. Bystrynski, Esq. P.O. Box 31665 Raleigh, NC 27622	ATTORNEY FOR: Plaintiffs
	Ronald C. Dilthey, Esq. Patterson Dilthey Clay Bryson & Anderson L.L.P. 4020 WestChase Blvd., Suite 550 Raleigh, NC 27607	Defendants, North Carolina Youth Soccer Association, Inc.
	Dan J. McLamb, Esq.	Defendants, Eric R. Meter, French

		John T. Molleur, Esq. Yate, McLamb & Weyher, L.L.P. P.O. Box 2889 Raleigh, NC 27602-2889	Soccer Network, and European Network

REQUEST TO CALENDAR and NOTICE OF HEARING

EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS (PLAINTIFF)	FILE NUMBER: 05 CVS 1922	ONSLOW COUNTY SUPERIOR COURT
vs.	COURT JURISDICTION:	DIST: ☐ SUP. ☒ X
ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE	[FILE-STAMP]	

GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA., (DEFENDANT)	

WEEK YOU ARE REQUESTING	**June 11, 2007**	*(SUBJECT TO AVAILABLE COURT TIME)*

Meditation Orientation Date: **Calendar Call:**

DOMESTIC CASES ONLY (Check each block that applies)			
CHAMBER HEARING COURTROOM:	CUSTODY SUPPORT	VISITATION ALIMONY	*EQUITABLE DISTR.* TRIAL

**Every week* 4-H:	PSS	ATTORNEY FEES	PRETRIAL	
**2nd, 3rd & 4th week* 4-C:	DB&B	CONTEMPT	MOTION	

DOMESTIC @ 2:00 P.M. Courtroom>>	DIVORCE: SHOW CAUSE:	*GENERAL CIVIL* Courtroom>>	MOTION TRIAL:	X

IF YOU CHECKED MOTION ABOVE, WHAT TYPE OF MOTION(S)?:

(1) Defendants' Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA Motion to Dismiss for Lack of Personal Jurisdiction

(2) *DO YOU REQUIRE?*	RECORDING EQUIPMENT:	(3) *(DISTRICT)*	COURT REPORTER:	*(SUPERIOR)*	

PLEASE INDICATE ANY OTHER SPECIAL CIRCUMSTANCE OR NEED:

CERTIFICATE OF SERVICE This is to certify that the undersigned has this date served this pleading upon all other parties to this cause by (X) depositing a copy enclosed in a post-paid, properly addressed wrapper in a post office or official depository under the exclusive case and custody of the United States Postal Service, ( ) handing it to the attorney or to the party, leaving it at the attorney's office with a partner or employee, or ( ) sending it to the attorney's office by a confirmed telefacsimile transmittal for receipt by 5:00 P.M. Eastern Time on a regular business	PRINT OR TYPE YOUR NAME: STATE BAR NUMBER: SIGN YOUR NAME: YOUR ADDRESS: TELEPHONE NUMBER:	Charlot F. Wood 16899 /s/ BELL, DAVIS & PITT, P.A. P.O. Box 21029 Winston-Salem, NC 27120-1029 (336) 722-3700

day, as evidenced by a telefacsimile receipt confirmation, or ( ) having the Sheriff serve the parties. 4-30-07					
DATE OF SERVICE	ARE YOU THE:		PLAINTIFF	X	DEFENDANT

The Goodyear Dunlop Tire & Rubber Company, Goodyear Dulop Tires EuropeB.V., Goodyear Luxembourg tires SA, Goodyear, SA, Goodyear Latikleri T.A.S., and Goodyear Dunlop Tires France SA

LIST BELOW THE NAMES AND ADDRESSES OF THOSE SERVED

NAME & ADDRESS:	David F. Kirby, Esq. William B. Bystrynski, Esq. P.O. Box 31665 Raleigh, NC 27622	ATTORNEY FOR: Plaintiffs
	Ronald C. Dilthey, Esq. Patterson Dilthey Clay Bryson & Anderson L.L.P. 4020 WestChase Blvd., Suite 550 Raleigh, NC 27607	Defendants, North Carolina Youth Soccer Association, Inc.
	Dan J. McLamb, Esq.	Defendants, Eric R. Meter, French

	John T. Molleur, Esq. Yate, McLamb & Weyher, L.L.P. P.O. Box 2889 Raleigh, NC 27602-2889	Soccer Network, and European Network

NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
ONSLOW COUNTY	SUPERIOR COURT DIVISION
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS, Plaintiffs, v. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA.,	05-CVS-1922 **AFFIDAVIT OF ROBERT C. OCHS, P.E., P.C.**

Defendants.)

Robert C. Ochs, P.E., P.C., first being duly sworn, says:

1. My name is Robert C. Ochs and I am a registered professional engineer.

2. For 25 years I worked for the Michelin Tire Corporation in France, New York and South Carolina.

3. While working for Michelin Tire, I served as Director of Product Analysis, and I have extensive experience in tire failure analysis.

4. Other positions I held at Michelin Tire include Project Manager, Process Development Manager, Plant Comptroller, Engineering Manager and Director of Product Analysis.

5. While working at Michelin Tire, I was involved in tire development, manufacturing and application, and I have extensive experience and expertise in the construction, manufacture and testing of tires.

6. I have worked with domestic and international vehicle manufacturers in their selection of tire, inflation pressures and suspension developments.

7. I am a registered Professional Engineer in the states of Georgia, New York and South Carolina. I am a member of the American Society of Mechanical Engineers, American Society for Testing Materials, International Tire Retreaders Association, Rubber Division of the American Chemical Society, Society of Automotive Engineers, and the Tire Society.

8. I have provided tire analysis regarding tire failure, tire/vehicle applications, .and tire manufacturing defects in hundreds of cases, and have been qualified and testified as an expert witness in both state and federal courts.

9. I am familiar with the European tire industry, particularly with manufacturing, design and distribution of tires in both Europe and the United States.

10. I traveled to France and personally inspected the tire that is at issue in this case.

11. Based on the serial number on the tire, which is required by the U.S. Department of Transportation for tires sold in the United States, the tire was manufactured at a Goodyear plant in Izmit, Turkey, owned by Goodyear Lastikleri T.A.S.

12. The tire at issue contained additional U.S. Department of Transportation markings that were placed there to allow the tire to be sold in the United States.

13. The tire at issue contained information showing that it was manufactured as qualified for sale in the United States.

14. The tire at issue has a U.S. code listing load and pressure ratings that conform to United States standards set by the Tire and Rim Association, the standardizing organization for the tire industry in the United States.

15. The tire at issue contains a "Safety Warning," written in English, that conforms to the warnings found on every tire for sale in the United States.

16. All of the information found printed on the tire is written in English, and the tire was manufactured and labeled in such a way as to allow it to be sold in the United States.

17. Based on my knowledge of tire manufacturing and the European tire market, this tire was designed, manufactured and marketed for sale worldwide, including sale in the United States and North Carolina.

Further, affiant sayeth not.

This is the 7th day of June, 2007

/s/
Robert C. Ochs

Sworn and subscribed
before me this 7th day
of June, 2007.

[SEAL]

/s/
Notary Public
My commission expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Affidavit of Robert C. Ochs** was served upon the opposing party by facsimile and by placing a copy in the United States mail, postage prepaid, addressed to the following:

Ronald C. Dilthey, Esq.
Patterson Dilthey Clay Bryson & Anderson L.L.P.
4020 WestChase Blvd., Suite 550
Raleigh, NC 27607

Dan J. McLamb, Esq.
John T. Molleur, Esq.
Yates, McLamb & Weyher, L.L.P.
P.O. Box 2889
Raleigh, NC 27602-2889

Charlot F. Wood
Bell, Davis & Pitt, P.A.
P.O. Box 21029
Winston-Salem, NC 27120-1029

This the 7 day of June, 2007.

/s/
William B. Bystrnski

NORTH CAROLINA	)	IN THE GENERAL COURT OF JUSTICE
ONSLOW COUNTY	)	SUPERIOR COURT DIVISION
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS, Plaintiffs,	)	05-CVS-1922
v.	)	**NOTICE OF 30(b)(6) DEPOSITION OF THE GOODYEAR TIRE & RUBBER COMPANY**
ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and	)	

GOODYEAR DUNLOP)
TIRES FRANCE SA.,)
Defendants.)

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the North Carolina Rules of Civil Procedure, the Plaintiffs shall take the deposition upon oral examination of The Goodyear Tire & Rubber Company beginning at 10:00 a.m. on the 27th day of June 2007, at the offices of Goodyear Tire & Rubber Co., 1144 East Market Street, Akron, OH, 44316. The deposition will be taken before a Notary Public or some other officer duly authorized by law to take depositions. The deposition will continue from day to day until completed.

You are required by Rule 30 of the Rules of Civil Procedure to designate one or more officers, directors or managing agents or other persons who consent and are authorized to testify on your behalf, and to have them present themselves at the above time and place for examination upon oral deposition. The representative(s) designated by the above-named defendant shall be knowledgeable and prepared to testify about the following matters:

a. The chain of distribution of the Goodyear Regional RHS tire at issue in this case, and the chain of distribution of any tires or tire products designed, manufactured, labeled, shipped or distributed by Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. or Goodyear Dunlop Tires France SA which are eventually

shipped to or sold in the United States or North Carolina.

b. Whether any tires or tire products designed, manufactured, labeled, shipped or distributed by Goodyear Lastikleri T.A.S. were eventually shipped into and/or sold in the U.S. or North Carolina during the past three years, and the nature of those products shipped and/or sold.

c. Whether any tires or tire products designed, manufactured, labeled, shipped or distributed by Goodyear Dunlop Tires Europe B.V. were eventually shipped into and/or sold in the U.S. or North Carolina during the past three years, and the nature of those products shipped and/or sold.

d. Whether any tires or tire products designed, manufactured, labeled, shipped or distributed by Goodyear Luxembourg Tires SA were eventually shipped into and/or sold in the U.S. or North Carolina during the past three years, and the nature of those products shipped and/or sold.

e. Whether any tires or tire products designed, manufactured, labeled, shipped or distributed by Goodyear SA were eventually shipped into and/or sold in the U.S. or North Carolina during the past three years, and if so, the nature of those products shipped and/or sold.

f. Whether any tires or tire products designed, manufactured, labeled, shipped or distributed Goodyear Dunlop Tires France SA were eventually shipped into and/or sold in the U.S. or North Carolina during the past three years, and the nature of those products shipped and/ or sold.

This is 11th day of June, 2007

KIRBY & HOLT, L.L.P.
/s/
David F. Kirby
William B. Bystrynski
Attorneys for Plaintiff
P. O. Box 31665
Raleigh, NC 27622
(919) 881-2111

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Notice of 30(b)(6) Deposition of the Goodyear Tire & Rubber Company** was served upon the opposing counsel by facsimile transmission addressed to the following:

Ronald C. Dilthey, Esq.
Patterson Dilthey Clay Bryson & Anderson L.L.P.
4020 WestChase Blvd., Suite 550
Raleigh, NC 27607

Dan J. McLamb, Esq.
John T. Molleur, Esq.
Yates, McLamb & Weyher, L.L.P.
P.O. Box 2889
Raleigh, NC 27602-2889

Charlot F. Wood
Bell, Davis & Pitt, P.A.
P.O. Box 21029
Winston-Salem, NC 27120-1029

This the 11th day of June, 2007.

/s/
William B. Bystrynski

STATE OF NORTH CAROLINA ONSLOW COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS, Plaintiffs, vs. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA.,	05-CVS-1922 **MOTION FOR PROTECTIVE ORDER OF DEFENDANTS GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S., AND GOODYEAR DUNLOP TIRES FRANCE SA**

Defendants.)

NOW COME defendants Goodyear Dunlop Tires Europe B.V. ("Goodyear Europe"), Goodyear Luxembourg Tires SA ("Goodyear Luxembourg"), Goodyear SA, Goodyear Lastikleri T.A.S. ("Goodyear Turkey"), and Goodyear Dunlop Tires France SA ("Goodyear Dunlop France") (sometimes hereinafter referred to as "the foreign Goodyear entities" or "defendants"), pursuant to Rules 26 and 30 of the North Carolina Rules of Civil Procedure, and move for a protective order barring the taking of a 30(b)(6) deposition of a representative of The Goodyear Tire & Rubber Company noticed by plaintiffs for June 27, 2007, on the grounds that plaintiffs seek to take the deposition in order to oppose the motions of the foreign Goodyear entities to dismiss the action against them for lack of personal jurisdiction, pursuant to Rule 12(b)(2) of the North Carolina Rules of Civil Procedure, but such deposition testimony could not provide any information which would be relevant to defendants' motions to dismiss, and plaintiffs' deposition notice is not timely under the circumstances. In further support of this motion, defendants show the court as follows:

1. On March 6, 2007, the foreign Goodyear entities ("defendants") moved to dismiss the action against them for lack of personal jurisdiction pursuant to Rule 12(b)(2) of the North Carolina Rules of Civil Procedure. Affidavits in support of the motions were served on March 6, 2007.

2. Counsel for plaintiffs and the defendants agreed upon June 11, 2007 as a mutually convenient date for the motions hearing.

3. Counsel for plaintiffs timely served their opposing affidavit on June 7, 2007, and counsel for defendants timely served their brief in support of their motions on June 7, 2007.

4. The hearing upon defendants' motions was held on June 11, 2007, before the Honorable Gary E. Trawick, in Onslow County Superior Court. At the hearing, plaintiffs' counsel handed up a brief, at the same time serving it upon counsel for defendants.

5. Counsel for defendants did not object to service of the brief on the date of hearing, although Rule 5(a1) of the North Carolina Rules of Civil Procedure requires service of such briefs at least two days before the hearing. However, counsel for defendants did request additional time after the hearing to submit a reply to the arguments raised by plaintiffs in their brief.

6. At the close of the hearing, Judge Trawick granted defendants' request for time to respond to plaintiffs' brief and ordered that defendants must serve their reply brief on or before June 20, 2007, mailing a copy to him on the same date. Judge Trawick also granted plaintiffs' request for time to respond to any new matters raised by defendants in their reply brief.

7. Counsel for defendants and counsel for plaintiffs fully argued the motions on June 11, 2007. The hearing was closed with no further request from the parties or instruction from Judge Trawick, other than regarding the permitted submission of the reply brief and response from plaintiffs as set out above.

8. After the hearing, at 4:45 pm on June 11, 2007, counsel for plaintiffs faxed to defendants' counsel a Notice of 30(b)(6) deposition of The

Goodyear Tire & Rubber Company (a non-moving defendant), attached hereto as Exhibit A.

9. A review of the 30(b)(6) notice shows that through the requested deposition, plaintiffs seek to gather information to support the "stream of commerce" argument set forth in their brief.

10. As shown by defendants in their reply brief, information regarding the alleged placement in the stream of commerce of products manufactured by the foreign Goodyear entities would be irrelevant, and it could not lead to the discovery of any relevant evidence, because the stream of commerce theory argued by plaintiffs is inapplicable on the facts of this case.

11. Further, plaintiffs did not request or seek any discovery between the filing of defendants' motions on March 6, 2007 and the close of the motions hearing on June 11, 2007. Plaintiffs' deposition notice is untimely, having been served after the hearing was closed, with Judge Trawick allowing only the submission of a reply brief by defendants and a subsequent response by plaintiffs to any new matters raised by defendants (of which there are none).

WHEREFORE, Defendants respectfully request that the Court enter a Protective Order providing that the Goodyear Tire & Rubber Company not be required to attend a Rule 30(b)(6) deposition as noticed in Exhibit A.

Respectfully submitted, this the 20 day of June, 2007.

/s/
WILLIAM K. DAVIS

State Bar No. 1117

/s/
CHARLOT F. WOOD
State Bar No. 16899

/s/
KEVIN G. WILLIAMS
State Bar No. 25760
Attorney for Defendants
The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA

OF COUNSEL:
BELL, DAVIS & PITT, P.A.
P.O. Box 21029
Winston-Salem, NC 27120-1029
Telephone: (336) 722-3700
Facsimile: (336) 714-4101

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing in the above captioned matter upon all other parties to this cause by:

hand delivering a copy hereof, properly addressed to the parties listed hereinbelow:

or by

X depositing a copy hereof in a first class postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, properly addressed to the parties listed hereinbelow.

or by

X facsimile (to William B. Bystrynski, Esq.)

This the 20 day of June, 2007.

/s/
CHARLOT F. WOOD
State Bar No. 16899

OF COUNSEL:
BELL, DAVIS & PITT,
P.A.
P.O. Box 21029
Winston-Salem, NC 27120-1029
Telephone: (336) 722-3700
Facsimile: (336) 714-4101

ADDRESSEE(S):
David F. Kirby, Esq.
William B. Bystrynski, Esq.
P.O. Box 31665
Raleigh, NC 27622

Ronald C. Dilthey, Esq.
Patterson Dilthey Clay
Bryson & Anderson L.L.P.
4020 WestChase Blvd., Suite 550
Raleigh, NC 27607

Dan J. McLamb, Esq.
John T. Molleur, Esq.
Yates, McLamb & Weyher, L.L.P.
P.O. Box 2889
Raleigh, NC 27602-2889

NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE	
ONSLOW COUNTY	SUPERIOR COURT DIVISION	
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS, Plaintiffs,	)	05 CVS 1922
v.	)	ORDER
ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA.,	)	

THIS CAUSE came on for hearing on August 6, 2007, before the Honorable Edwin G. Wilson Jr.,

Judge Presiding in the Superior Court for Onslow County, North Carolina, on the Goodyear foreign defendants' motion for a protective order from the plaintiffs' notice for a 30(b)(6) deposition of a representative or representatives of The Goodyear Tire & Rubber Co.

The Court, having considered the submissions and heard the arguments of the parties, finds that the defendants' motion for a protective order should be DENIED. The Court, in its discretion, rules that the Plaintiffs may proceed with their 30(b)(6) deposition of The Goodyear Tire & Rubber Co.

It is therefore ORDERED: The Goodyear foreign defendants' motion for a protective order is DENIED. The Goodyear Tire & Rubber Co. shall make a person or persons available to answer those matters set forth in Plaintiffs' original notice of 30(b)(6) deposition, dated June 11, 2007, such deposition to be held at a time and location mutually agreeable to the parties.

This is the 11 day of October, 2007.

The Honorable Edwin G. Wilson Jr.
Superior Court Judge
Presiding

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Order** was served upon the opposing counsel by placing a copy in the United States mail, postage prepaid, addressed to the following:

Charlot F. Wood
Bell, Davis & Pitt, P.A.
P.O. Box 21029
Winston-Salem, NC 27120-1029

Ronald C. Dilthey, Esq.
Patterson Dilthey Clay Bryson & Anderson L.L.P.
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John T. Molleur, Esq.
Yates, McLamb & Weyher, L.L.P.
P.O. Box 2889
Raleigh, NC 27602-2889

This the 16th day of October, 2007.

/s/
William B. Bystrynski

In The Matter Of:

Edgar D. Brown, et al. v.
Eric R. Meter, et al.

Donn P. Kramer
September 28, 2007

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Court Reporters

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[PAGE 1]

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
EDGAR D. BROWN, et al.,
Plaintiffs,
-vs- CASE NO. 05 CVS 1922
30(b)(6) DEPOSITION
ERIC R. METER, et al.,
Defendants.

- - - -

Deposition of DONN P. KRAMER, taken as if upon cross-examination before X. John Revmatas, a Registered Professional Reporter, a Notary Public within and for the State of Ohio, at the offices of Roetzel & Andress, 222 South Main Street, Suite 400, Akron, Ohio, at 10:00 a.m. on Friday, September 28, 2007, pursuant to notice and/or stipulations of counsel, on behalf of the Plaintiffs in this cause.

- - - -

MEHLER & HAGESTROM
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1750 Midland Building 101 West Prospect Avenue	720 Akron Centre 50 South Main Street
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[PAGE 2]

APPEARANCES:
David F. Kirby, Esq.
Kirby & Holt, LLP
3201 Glenwood Avenue
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Raleigh, North Carolina 27612
(919) 881-2111,

On behalf of the Plaintiffs;

Charlot F. Wood, Esq.
Bell, Davis & Pitt, P.A.
Suite 6000 Century Plaza
100 North Cherry Street
Winston Salem, North Carolina 27101
(336) 722-3700,
On behalf of Defendants The Goodyear Tire & Rubber Company; Goodyear Dunlop Tire Europe B.V.; Goodyear Luxembourg Tires SA, Goodyear SA; Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA.

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WITNESS INDEX

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DIRECT EXAMINATION DONN P. KRAMER	
BY MS. WOOD	61

EXHIBIT INDEX

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Plaintiffs' Exhibit 3, photograph	32

[PAGE 4]

DONN P. KRAMER, of lawful age, called by the Plaintiffs for the purpose of cross-examination, as provided by the Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposed and said as follows:

CROSS-EXAMINATION OF DONN P. KRAMER

BY MR. KIRBY:

Q. Please state your name.

A. Donn P. Kramer.

Q. Mr. Kramer, where are you employed at this time?

A. Goodyear Tire & Rubber Company.

Q. How long have you been employed by that company?

A. 35 years.

Q. What position do you hold at this time?

A. Position is director of product and supply chain management for commercial systems.

Q. How long have you held that particular position?

A. Since December 1st of 2006.

Q. Would you tell me in that capacity what are your general responsibilities day to day?

A. Basically on the product side it's taking product from concept through production, deciding performance parameters and so on. And then on the supply chain side it's scheduling the plants for production on the commercial product side of

[PAGE 5]

the business, and customer service, OEM replacement, and deployment of product from the facilities.

Q. You used the term OEM, is that original equipment manufacturer.

A. Yes.

Q. Now, in this capacity do you have responsibility for I guess any type of connection or work assignments with any of the Goodyear companies that are located outside of the United States?

MS. WOOD: Objection to the form of the question.

MR. KIRBY: That's fine.

Q. You've answered earlier in your testimony today that you work for Goodyear Tire & Rubber Company and that company that you've described is the Goodyear Tire & Rubber Company located in Akron, Ohio; is that correct?

A. Yes.

Q. Okay. And in your job I take it and working 30 years with Goodyear, you're aware that Goodyear has either subsidiary companies or they have related companies that have locations outside of the United States, is that fair to say?

A. Yes.

[PAGE 6]

Q. Okay. And my question was in your work, Mr. Kramer, do you have day to day, week to week or from time to time, do you work with some of these companies that are located outside the United States that are Goodyear companies?
A. No direct responsibility. Collaboration only.
Q. Okay. Are there people here in Akron that do have direct assignments or direct say daily work with the overseas Goodyear companies or entities?
MS. WOOD: Object to the form.
A. That's outside my knowledge. There might be.
Q. Fair.
A. It's possible.
Q. Fair.
A. I don't do it, so it's not my area of expertise.
Q. Just so that I'll have some understanding, in the past what would occasion you to work with some of the Goodyear companies that were located outside the US that are manufacturing plants or have facilities out of the US?
MS. WOOD: Object to the form.
You can go ahead and answer.
The problem I have is work with.
MR. KIRBY: I understand. If he has a problem with my question, I can let

[PAGE 7]

him tell me.
Q. Go ahead.
A. Well, the only time that we would interface basically with someone outside the United States or Canada in my job would be that we've defined a need that we have to have product for and that at that point then we would make contact through the hierarchy and the subsidiary or other divisions and just contact and see if they could supply whatever our requirement was at that time.
Q. All right. And for example, in past years have you ever had a chance to work with Goodyear Dunlop Tires of Europe by any chance?
A. No.
Q. Have you worked with, and I may not pronounce this correct, but Goodyear Lastikleri, which is in Turkey as I understand it?
A. I do not work with Turkey directly.
Q. Okay. How would you work with Turkey indirectly?
A. We have offices, sales marketing offices that develop business plans, sales plans. We would contact them and say we have this need and they would then decide, you know, where should the product come from.
Q. Okay.

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A. Would it come from, you know, Turkey as you're identifying there or not, then we would make a decision.

Q. All right. What about Goodyear Tires France SA?

A. I have not worked with them.

Q. Okay. And Goodyear Luxembourg?

A. Luxembourg is similar to the way that I described Turkey.

Q. Okay.

A. It would be in the similar fashion.

Q. All right. And so if you felt a need you may contact them for producing the actual tire or the item?

A. Well, not them directly. It would be, again, the offices which could be -- we have technical offices in Luxembourg and most of the European group is located in Brussels, so we would make contact, and then there's a group that does sourcing and they would say, okay, this is a product you need, here's where we would go to source the product from --

Q. Okay.

A. -- at this time.

Q. Is this a way of saying that if a product was envisioned here in the Akron office and you

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contacted Europe or you contacted Turkey, you may be calling them to try to determine where is the best place to either help with the production or help with the design or help with manufacturing, is that a fair way to state it?

MS. WOOD: Objection to form.

Q. Go ahead.

A. Generally most of the products because of their unique performance characteristics and the different market conditions are sourced domestically, so it's rare that we -- Goodyear as a company, as most whether it's Michelin or Bridgestone, kind of work and source domestically. And then if there's rare exceptions where there's vehicles that come in from a different region of the world and you require a product, then we go to the area and source the product in, but there's not a lot of global platforms that are set up to do automatic sourcing of product to bring it in.

Prime example is Europe, there's a lot of similarity between the Asian, Eastern and Western European markets, those are uniquely different in general than United States, Canada, and Mexico. The roads are different, the speeds are

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different, the tire load carrying capacity is different, and the tire sizing is different. As a result there aren't many opportunities to source the product from some of these other areas of the world because each market is unique and that's why we try to source from within most of the time.

Q. Thank you. Well, that's been very helpful.

MR. KIRBY: Now, let me hand you, this is the deposition notice for today and I would like to mark this as Exhibit 1 to the deposition, if you would.

- - - -

(Thereupon, Plaintiffs' Exhibit 1, Amended Notice of 30(b)(6) Deposition of the Goodyear Tire & Rubber Company, was marked for purposes of identification.)

- - - -

Q. First of all, Mr. Kramer, do you know, how are you selected as the person to appear today and to offer testimony on behalf of Goodyear Tire?

A. Internal counsel had come to me and asked - -

MS. WOOD: Excuse me. I'll object to any attorney/client

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You don't have to tell him what
you discussed with counsel.
MR. KIRBY: Right.
Q. But you were asked to come and appear and
testify; is that correct?
A. Yes.
Q. All right. Have you given deposition testimony
before today?
A. One other time.
Q. And did it involve similar subjects to what we're
talking about today, that is the marketing and
distribution of Goodyear products?
A. Yes.
Q. Have you ever testified in court before on behalf
of Goodyear?
A. No.
Q. With respect to the deposition for today there's
an A through F items, which are the topics to be
inquired about, and those appear on Page 2 and 3
What's been marked as Exhibit 1 to your
deposition.
First of all, have you had a chance to see
this deposition notice before today?
A. Recently, yes.
Q. And tell me what when you reviewed the topics

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that were to be questioned about today, did you feel that you had information before coming in today to answer all these questions?
A. No.
Q. Okay. And after being provided a copy of this deposition notice, what did you do to try to determine the answers to the questions listed or the topics listed on the notice of deposition before coming in today?
A. Well, the biggest thing that was done was is I am familiar with our process for distribution, so since a lot of this dealt with foreign entities, I contacted the person in Europe that has a similar position to me to discuss the process by which tires are distributed to see if it's similar, dissimilar and any nuisances that take place from what we do in the States and Canada.
Q. All right.
A. That was the primary.
Q. All right. Did you consult any computer databases or any other sources other than speaking to individuals?
A. Internal within North America, ours for US.
Q. All right. And were there other than doing computer data searches, was there any type of

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other source that you reviewed or other materials you reviewed before coming in today to try to discuss these topics?

A. No.

Q. Let me begin with what's under Subparagraph A to the notice of deposition. The question is about the Goodyear Regional RHS tire and the question about is its chain of distribution and whether those tires were eventually shipped or sold to the US.

My first question is, are you familiar with this Goodyear Regional RHS tire?

A. It's one that we normally, again, do not distribute in the States or Canada. Suffixes says would say that it's a regional haul steer, that's the kind of a global definition for it.

Q. Okay. Why would it be described as a regional haul steer, is that a -- does that mean it's a tire intended to be mounted at the front of a vehicle or on the steering wheels of the vehicle or --

A. Well, it could be on the front or rear. It's a ribbed design or slash all-position, so it's designed for a highway use. Easiest way to describe regional, at least how we describe it in

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the US would be, it goes out and back same day,
so it's domicile versus a long haul where they
may go out and stay out and travel the complete
United States, so they don't really come back to
a specific area every day, so they're generally
traveling three or 400 miles out and/or back or
significantly less than that, so that's kind of
the definition for regional.
Q. And what would be the what you would believe to
be the design application for this tire, what
types of vehicles would this tire be used on?
A. Well, generally, I would say the way we would
define it Class 6, 7 or 8. Class 6, 7, and 8 are
based on gross vehicle weight. There could be a
single screw, so you have four drive tires on the
back and two steer tires. You could have tandem
on the back and two steer tires, so a total of
ten tires. You could have a straight truck, not
a tractor that hooks onto a trailer, but just a
straight truck that would be two on the front and
four on the back. You could also have buses and
they could be on buses.
Q. Okay. Now, this particular tire or this type of
tire, do you know where these tires are presently
manufactured?

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A. They could be manufactured in Europe and -- I don't know. This is a European designation, so the assumption would be it would be in Eastern and Western Europe.

Q. Okay. Are these tires manufactured to US specifications and is DOT specifications and tire and rim specifications so that they can be used in North America or the US market if a decision was made to do so?

MS. WOOD: Object to the form.

A. Well, generally DOT doesn't necessarily mean that the tire is destined to be used in the United States and that it's built 100 percent to the United States' specifications or to Latin Americas or to Asias as an example. Again, the reason being is the roads, the speeds, the weights. European roads are different, the speeds are different, and the loads are extremely a lot heavier than what we would normally experience in the States, so the constructions and materials and compounding are different than in most instances than what we would utilize in the States. Just because it has DOT on it or an identification number, doesn't necessarily mean It's destined for the United States.

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Q. Okay.
A. And there's reasons for that, but we can explain
that later if there's interest.
Q. Well, here's what I'm trying to get an
understanding of. The Goodyear Regional tire
series, and specifically this was one of the
tires that was on the bus that was involved in an
accident that led to the death of the two kids
that I represent.
My question is are those tires, even though
they're manufactured in Europe, are they built to
a specification and degree that those tires could
be shipped into the United States and sold to the
United States?
A. Normally our technical group would have to make
that call, so Luxembourg being a design center,
technical and design center in Europe, which
handles basically Asia, South Africa, Middle
East, and Eastern and Western Europe. Akron
would handle Latin, and South America, and North
America.
The specifications that would be developed
for Europe and use in Europe is by Luxembourg.
If the United States said we had a need for that
tire, then we would go to our technical group and

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say does that tire meet the specifications required for our markets and our applications. Very few do and most of the time the tires have to be modified, especially for compounding, and sometimes there are some different materials that would be made for our market versus Europe. It's rare that we would ever bring in a tire into this country and just take it at the face value of the spec that was for Europe.

Q. All right. Now, just so I will understand, have you done any research or inquiry to determine if any of the Goodyear Regional tires were shipped either to distributors or to others for eventual shipment into the United States, distribution into the United States?

MS. WOOD: Objection.

Go ahead. You can go ahead and answer.

A. Basically the subject tire there has been none of that size with one exception that has come into the United States. The size is not used in the United States. The exception was the fact that we had a strike last year in October and we had no production out of our union facilities from October through December, so in November we

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contacted Europe, we went through and said we're going to need some product, there may be some modifications required, but we need some product. So we took some product, ordered some product. Product came in in December, January, and February. There may have been a very, very, very small quantity of those tires of that size.

Q. Okay.

A. And we then subsequently when we came back to work in January we never really uncrated those tires. In most instances all the tires we got during that time period we shipped back to Europe because we knew that the performance from a longevity standpoint probably isn't going to equal our tires.

Q. Okay.

A. From a safety standpoint they're fine, but when it comes to irregular wear, long wear, miles to removal, lowest cost of ownership, they wouldn't meet our requirement, so we really didn't want them.

Q. All right. Now, you mentioned about this particular size, in your investigation have you determined that tires in other sizes that is that the Goodyear Regional line whether any of those

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tires in that line were shipped to the United States and sold in the US market even though they may have been different tire sizes or different I guess widths as well as, you know, rim size tires?

MS. WOOD: Objection.

A. There's different rim sizes that could have come in but, again, most went back, but put it in probably perspective, it's very, very, very small numbers, I mean like decimal points compared to our requirement.

Q. To try to get some sense of this.

I mean, tires were shipped into the US that were Goodyear Regional RHS tires, at least this was about approximately a year ago when a strike was going on, some came in the very same size as the tire at issue in this case, and some came into the US in different sizes and those that came into the US in different sizes, did they get distributed out and sold in markets here in the US?

MS. WOOD: Objection.

A. Very few.

Q. Okay.

A. Minimal.

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Q. But some tires did get shipped out?
A. Yeah, there might have been a couple hundred that would have gotten shipped out in other sizes.
Q. I understand.
Do you know if any of those tires were sold in North Carolina?
A. Zero.
Q. Okay. Do you know what States those tires were sold?
A. Not off the top, but I -- I do not have that data with me.
Q. Okay. When those tires were distributed and sold here in the US, was there any exclusion or ban on selling any of those tires in North Carolina, even though you say none got sold, there wasn't any ban on selling them?
A. There was no ban.
Q. All right. Now, other than this shipment of Goodyear Regional RHS tires, did you determine if any other of these tires, and I'm talking about the Goodyear Regional line, were any other tires shipped to the United States for sale and distribution here in the other years other than during this strike period?
MS. WOOD: Objection.

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A. Other sizes other than --
Q. Yes.
A. -- and other types other than RHS?
Q. Correct.
A. There are some tires that are brought in for unique applications and vehicles that may have been imported, like I had mentioned earlier into the States, that have unique sizes and they are European vehicles and we will stock a few tires for replacement for those particular vehicles, so there's a small number of those tires that would come in on a regular basis.
Q. And can you help elaborate on that? I take it what you're saying is that there is some either European trucks or European buses or some other vehicles that may be marketed here in the States and so they have particular tire needs and you would bring some of these tires in to stock them?
A. Somebody requested, looks like you don't have the size domestically, can you see if you could source because we have this market need, so we kind of go through the process of saying which customer is it, how big is the market, then we can get our technical group to kind of look at the specification of the product and say is it

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okay, should we bring it in. And if the answer is yes, then we will bring in that product for that specific application.

Q. Okay. Can you tell me what are some of the vehicles that tires have been brought into the US, these Goodyear Regional tires, what types of vehicles if they have been I guess imported for so that you have those tires available for sale and distribution?

MS. WOOD: Objection.

A. First we really don't bring in the RHS --

Q. Okay.

A. -- for regional haul.

The tires that are predominantly brought in from Europe are for low boy trailers. They are like horse trailers, they're, you know, storage type, you know, that a plumber or, you know, guy pulling a small trailer behind, boat trailers. There's 17-and-a-half-inch in a lot of instances, 15-inch in some instances, so they're more for specialized types of vehicles that we just do not sell here in the United States normally.

Q. And for how many years has Goodyear been bringing this type of tire into the US so that you had them available for sale and distribution to

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Stateside?
A. I'm not sure --
MS. WOOD: Objection.
A. -- how many years but, again, you know, given our longevity as a company, we bring tires in on rare occasions, again, to handle the applications a few times.
Q. Now, do you know where, do you know what plant or facility the Goodyear tires that are brought in for say low boy trailers or boat trailers in what plant or facility those tires are manufactured in Europe?
A. Well, generally Slovenia would be manufacturing of some of those tires. Luxembourg. Wittlich, Germany, and also Turkey. Those are the commercial facilities that exist in Europe that we would be involved in.
Q. And these tires for low boy trailer applications, boat trailer applications, are they sold only through Goodyear dealerships or do you distribute these tires out to independent wholesalers and retailers, people like Costco, Wal-Mart or Pep Boys or others?
MS. WOOD: Objection.
A. Well, generally Costco, Pep Boys, and the big box

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companies do not handle commercial truck. Sam's Club handles some commercial truck, but I think most of theirs are imported from China, but basically the big box companies don't deal in commercial truck tires, so most are sold through independent dealers who could be exclusively Goodyear or they can be multi-brand customers.

Q. And with respect to these types of tires, are those tires, do they have any restrictions or limitations on them when they are imported into the US as far as they're only sold in certain States or are these tires just distributed nationally for whoever needs the tires or wants the tire?

MS. WOOD: Objection.

A. Well, the distribution once they come in and They've met the safety standard, then they can be distributed. The tire itself would have load, inflation, and safety standards that are identified on the tire.

Q. Okay. And have you done any research to determine if any of the Goodyear Regional tires for these types of applications wherever sold in North Carolina?

A. There have been zero sold in North Carolina on

the subject tire at issue in A.
Q. All right.
A. Yes.
Q. But on --
A. Other tires?
Q. Yes, other tires.
A. Some other tires have been sold in North Carolina
Q. Okay.
A. Again, it's of a minuscule number.
Q. Do you know how many tires were sold in North Carolina, did you determine that number?
MS. WOOD: Objection.
A. Yes.
Q. Okay. And how many were there sold in North Carolina?
A. 1,847 from 2004 through 2007 August. And of those about a thousand were basically nonstrike related type product and 800 or so were normally just that which would have been brought in for the strike. That's out of 24 million truck tires in 2006 and upwards to 26 million, depending on the market, so --
Q. Okay.
A. – that's over a four year period again.

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Q. All right. And did you determine when you conducted that search out of what facility these 1,847 tires were manufactured, in other words, which of those manufacturing locations in Europe they were made at?

A. Turkey.

Q. Were they all made in Turkey?

A. Uh-huh, yes.

Q. Just purposes of this deposition, Turkey would be Goodyear Lastikleri T.A.S., is that correct, that That's the Turkey manufacturing facility?

A. That's correct.

Q. Okay.

A. That was the source of the tires, production source.

Q. And just so I have this correct on the record, did all 1,847 that you determined were sold in North Carolina between 2004 and 2007, that is August 2007, they were all made at the Goodyear Lastikleri T.A.S. plant facility?

A. That's correct.

Q. Okay. Now, other than these Goodyear Regional tires that we talked about for the different kinds of applications, that is a nonbus application, but low boys, trailers, are you

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aware of any other Goodyear Regional tire which may be used in some other kind of application that was also shipped into the United States and sold in our markets here in the past three to four years, say between 2004 to 2007, that is tires other than the ones you've just identified?

MS. WOOD: Objection.

A. Other tires that would have been into North Carolina that would have been brought in?

Q. I'm just speaking right now about Goodyear Regional tires you. You and I have talked about the specific sized tire that is at issue on the bus, we've talked about that and you say that particular sized tire you have no -- you checked that and had not been shipped into or sold to North Carolina; is that correct?

A. Correct.

Q. But you've also done checking and you've determined that Goodyear Regional tires of different sizes have been shipped into the United States and sold in North Carolina between 2004 and 2007 and that's a total of 1,847 tires.

MS. WOOD: Objection.

Q. My question now is, are there other Goodyear Regional tires that have been manufactured at

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Goodyear plants overseas that were shipped into the United States and sold here in our markets other than this --

A. Group of 1,847?

MS. WOOD: Objection.

Q. Correct.

A. There's some. Again, very small number that are requested for application specific vehicles.

Q. And could you tell me about those tires and what vehicles they're brought in for?

MS. WOOD: Objection.

A. Generally cement mixers, front end of cement mixers or for waste hauling, front end loaders where it's heavier loads. They're very wide balloon type tires.

Q. Okay. And in your search, did you determine approximately how many of those tires had been brought into the US?

MS. WOOD: Objection.

A. I did not specifically look for those quantities.

Q. Okay. I take it as you sit here --

A. It's small.

Q. I understand.

-- as you sit here today that, yes, some of those types of tires are also brought in for

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these specific uses --
A. Yes.
Q. -- and applications?
A. If they clear our technical groups' auspices of they meet our standards.
Q. Okay. And when you talk about your technical group, you're talking about the technical group here Stateside in Akron?
A. Right.
Q. Now, with respect to these types of tires for either cement mixers, waste haulers, these larger balloon type tires as you're describing them, what plants or facilities would those tires be manufactured in overseas?
A. Luxembourg.
MS. WOOD: Objection.
Q. Luxembourg.
And would that be Goodyear Luxembourg Tires SA, is that the plant or facility where they would be manufactured?
A. Yeah. Well, that's an enterprise. There is just a Luxembourg plant for production facility.
Q. Are any of the cement mixer tires or waste hauling tires manufactured in the Turkey plant, the Goodyear Lastikleri plant?

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A. Not that I'm aware of. I don't have their authorized line, but not that I'm aware of.
Q. All right. Just from I'm trying to clear this whole subject up, I want to make sure I've got all of your knowledge here.
Other than the specific sized tire that is the subject of this case that was on the bus, other than the trailer type tires, these low boys and boat trailer tires, other than the cement mixer, waste hauling type tires, are you aware of any other Goodyear Regional tires manufactured overseas that are brought into the US for any type of application?
MS. WOOD: Objection.
A. No.
Q. So that would be the only -- that would be the only types of tires and the only kinds of applications --
A. Those are -- right, the ones that we would, you know, not have a source here or that we would make a request to bring them in to meet a Customer's need.
Q. So if I understand your testimony at this point in time, primarily these tires that are brought in are brought in really because Goodyear US

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plants may not make that particular type of tire?

A. Right.

Q. It's simply easier to have your European or Asian or overseas that do make those tires just make extra ones and ship them here so long as they're brought up to or maintained to US standards --

MS. WOOD: Objection.

Q. -- is that correct?

A. Yes.

MR. KIRBY: Mark this.

- - - -

(Thereupon, Plaintiffs' Exhibit 2, photograph, was marked for purposes of identification.)

- - - -

Q. And going back to the original tire that we've talked about. I'll hand you a photograph I've marked Exhibit 2 to this deposition. If you would, just look on this tire, at least in the photograph, the markings on it say Goodyear Regional RHS. Actually, let me get another one. This may be more helpful.

MR. KIRBY: Mark this Exhibit 3 to your deposition.

- - - -

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(Thereupon, Plaintiffs' Exhibit 3, photograph, was marked for purposes of identification.)

- - - -

Q. If you look at Exhibit 3, it's a little closer up photograph, and it has a marking DOT PANU and some other serial numbers, and then there's a safety warning, which is hard to read, the print is very small, but my question is, and if you look at this tire, are you able to determine from the markings on the tire as such whether this tire was manufactured in a Goodyear plant overseas to I guess US standards so that the tire could be sold in the US or placed on a vehicle, truck or bus or whatever that can be shipped into the US and sold in the United States?

MS. WOOD: Objection.

A. Well, first, it would say that the first two digits of the identification number is definitely not a domestic US facility, so it would say that It's made outside the United States.

Q. All right. And what do those two letters indicate to you?

A. Well, I'm not sure, my assumption is that it would be Turkey.

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Q. Okay. But as far as others that were manufactured outside the United States, is this a tire that could be imported into the United States for sale here based upon the I guess specifications to which it was manufactured?

MS. WOOD: Objection.

A. Well, the answer normally would be, no, because again this size is not specifically used in the United States --

Q. All right.

A. -- period.

Q. Okay.

A. So the specification would normally say if it would have a customer that had brought a vehicle in, then we more than likely in this instance would have gone through and said there's something that has to change for that to work in the United States.

Q. Okay.

A. And our technical group would have evaluated, again, the compounding and all the other pieces to make a decision whether or not we should take a risk and bring it in. If we did, you know, what would be the likelihood of substandard performance versus our current product, but this

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size is not one that we would normally be involved in.

Q. And when you talk about size that has to do with either the width -- primarily the width of the tire; is that correct?

A. Well, overall diameter, circumference, width.

Q. It's just not a size tire that is customarily found on, for example, US buses or US trucks --

A. Right.

Q. -- is that a fair way to say it?

A. That's correct.

Q. All right. If this tire were, for example, if we talk in terms of automobile tires, people go out and buy a tire and that's a 16/195 tire or 16/205 tire, a lot of vehicles have those size tires on them or 17-inch tires, if it were a tire that was similar in size, for example, to those used in the United States, are you aware of any reason that this particular tire could not be -- when I say tire -- this Goodyear Regional RHS tire why it could not be sold in the United States assuming it wasn't the same size as tires being used on trucks and buses here --

A. Well --

MS. WOOD: Objection.

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Q. -- is there anything about the manufacturing of this tire that would cause it to be not permissible for sale in the United States?

MS. WOOD: Objection.

A. Well, I think that you need to probably have someone purely on the technical side give you an exhibit answer. It's kind of outside my area of expertise.

Q. All right. That's fair. Now, before we -- thank you, Mr. Kramer. Before we leave the first subject matter in this notice of deposition, which was the chain of distribution, so that I'll understand the tires that did get shipped into the United States from Goodyear Lastikleri T.A.S., were those tires shipped solely through Goodyear chain or were those tires sold to independent dealers from Europe, for example?

MS. WOOD: Objection.

A. Well, for our involvement they would never go through another independent dealer. We would handle it through our own internal distribution.

Q. Okay. And do you know if of those 1,847 tires sold in North Carolina, were all of those sold through Goodyear tire dealers or Goodyear --

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through the Goodyear distribution, internal distribution or were they sold through independent?

MS. WOOD: Objection.

A. Well, Goodyear would have brought them in --

Q. Okay.

A. -- and then they would have been sold through the independent dealers.

Q. Okay. And obviously in our discussion those tires were manufactured by Goodyear Lastikleri T.A.S., who would actually import them into the US, would Goodyear Lastikleri ship them into the States?

MS. WOOD: Objection.

A. Well, first of all, the plant at Turkey doesn't control any distribution.

Q. Okay.

A. They just manufacture the tire.

Q. Got you.

A. They don't interface with any of the other pieces. Their job is to be given a forecast or a ticket and then they just build widgets.

Q. Okay.

A. And then someone then decides how those widgets then get distributed to customers and to

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warehouses, all independent, so that enterprise really they just make widgets. That's all they do.

Q. They manufacture the tire?

A. Yeah.

Q. Okay. And are you aware of who would be the importing entity that would bring the tire into the US?

MS. WOOD: Objection.

A. Well, not specifically. We use a international, you know, because it goes through freight forwarding, through customs and, you know, there are different billing enterprises, but you know.

Q. Would Goodyear, Akron that is the Goodyear Tire & Rubber Company, would the Akron entity of Goodyear be the company that made the determination that we need to import these tires for sale in the US?

A. Not necessarily.

MS. WOOD: Objection.

Q. Okay.

A. The independent business unit would, again, be the one where the requirement resides and they would put in a formalized request through the chain and it would say, okay, we don't make the

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tire here and it would go through the chain over to wherever. It could go to Latin America, it could go to Europe. Generally they will then say, okay, we do have that size, then that's when the technical group would look at the size and the specification and try to make a determination. If they say yes, then Europe makes a decision. We either, you know, ship tires from a warehouse, wherever or will ship tires directly from the plant. So it could come from a plant in a container through port over to a port here and we would then put it in a warehouse and then redistribute it to customers as required, or Europe if it's a different quantity and it's not big enough to go to the plant and direct ship, they'll maybe ship it out of the warehouse, so.

Q. And try to get some sense of what Goodyear entities have their hands on these tires as it went through the system here. Obviously Goodyear Lastikleri they made the tire, they are the ones that made the tire the manufacturing plant --

A. Yes.

Q. -- and I'm talking about these Goodyear Regional tires, the 1,847 that wound up in North Carolina.

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As you're sitting here today, do you know who made the request to have those tires brought here Stateside, whether that was Goodyear Akron or if it that was the Europe Goodyear Luxembourg or --

MS. WOOD: Objection.

A. Well, Europe would never send tires over here through --

Q. Okay.

A. -- as one of our enterprises without coming through North America tire to say, you know, should the tire come in or shouldn't it come in. The only way, you know, that just doesn't happen.

Q. Okay. All right.

A. But again, because of the huge differences in market, the passenger market is different. The truck market because of the things that I mentioned before are so unique that the products just don't normally are not consumed here.

Q. All right. Now, once the tires are brought into the United States who controls the distribution of the tire at that point in time, is that Goodyear Tire & Rubber Company that is the Akron North America entity?

A. Well, the North America Tire Group.

MS. WOOD: Objection.

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Q. Okay.
A. Within the Goodyear Tire & Rubber Company.
Q. All right.
A. Corporate provides us a lot of direction, but not involved with our business per say.
Q. Okay. Now, I know I'm repeating myself at this point in time, I just want to make sure before we move forward. As you're sitting here today you're not aware of any other Goodyear Regional tires that had been shipped into the United States for sale other than what you have shared with me to this point in time; is that correct?
A. Yes.
Q. Okay. Now, let me talk about the Goodyear Lastikleri manufacturing facility.
A. Yes.
Q. You have mentioned that they do make Goodyear Regional tires at that facility including the tire in the photograph presumably was made at that facility, is that fair to say?
A. Well, that's an assumption.
Q. Okay.
A. I'm not specifically -- when you look at the identification number the first two digits always denote plant location. I'm not familiar with all

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the plant digits that would say other than I know
ours are M in the -- domestically, so it tells me
that it's outside the United States, but I'm sure
you know, if that's what it is we could easily
find out and validate that that's Turkey.
Q. Now, with respect to Goodyear Lastikleri that
facility, we do know in discussions that they
make the Goodyear Regional tire there, what other
types of tires are made in that facility, do they
make passenger?
A. That I don't know.
Q. Okay.
A. I'm not familiar with that.
Q. Okay. So you don't know what other tires are
manufactured there other than you are aware that
they make Goodyear Regional tire there?
MS. WOOD: Objection.
A. And other than what we had sourced for those
unique needs.
Q. All right. Do you know whether they make any
other types of tire products, inter tubes, or
other types of materials for tires other than
these Regional tires at that facility?
MS. WOOD: Objection.
A. No, I'm not familiar with that at all

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Q. Okay.
A. Again, we just put our request in to Europe and then Europe would then determine the source. The only way that I would know is what we would receive, you know, I can track that at that point, but I don't really follow what the products they make.
Q. Okay. The question or the topic that I was going to try to ask you about was were there any tires or tire products either designed, manufactured, labeled or shipped and distributed by Goodyear Lastikleri T.A.S. into the US and sold in US or North Carolina over the past three years. I take it from what you're telling me you're not aware of other tire or tire products they manufacture there?
A. That's correct.
Q. Okay. Is there someone here in Akron that has some oversight of the activities or manufacturing in tire production of Goodyear Lastikleri anyone here Stateside?
MS. WOOD: Objection.
A. Not directly.
Q. Okay. Anybody indirectly that would have some oversight that you're aware of?

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MS. WOOD: Objection.
A. Not in Akron. In other words, the European team would be able to define what products are made there.
Q. All right. Is there someone here in Akron though that someone in your -- on the financial side of the business someone that keeps up with, you know, how sales are going for those tires, and how many tires are being produced, how many tires are being sold, in what territories, geographic territories that are being sold --
MS. WOOD: Objection.
Q. -- is there someone here?
A. It's outside of my area of expertise. There may be or may not be. I don't know.
Q. That's fine. You're not in a position today to answer this question B then; is that correct?
A. From a sourcing standpoint I can tell what tires came into the United States and where we housed the tires.
Q. Okay. And answer that question, where were these tires housed in the US when they were brought in?
A. I've got to check the specific warehouse.
Q. Okay.
A. But we usually bring them in to one or two

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warehouses on truck tires on all the imports and then we will distribute nationwide out of those.

Q. Where are those two warehouses located?

A. Well, generally we will bring them into Columbus, Ohio and to sometimes York, Pennsylvania, and then Topeka, Kansas.

Q. Okay. Did you make any other inquiry about the Goodyear Lastikleri product being sourced into the US other than the products you've shared with me?

A. No. Only discussion was, again, at the beginning I mentioned about the process to see if the process of distribution is similar.

Q. Okay.

A. I can talk about that, but beyond that that's not my area of expertise.

Q. Okay. And what is the process of distribution of tires that would be sourced from Goodyear Lastikleri for sale in the US, what would that process be?

A. Well, the process for tires that are produced in a plant, regardless, it could be Turkey, it could be, you know, wherever. There's three channels, either goes to OE, it goes to replacement, or it goes for export. If it goes to OE it can either

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be sourced in two ways. It can either be shipped directly from the plant to a customer, mainly OEM. If the customer is large enough they could go to a replacement customer. If they could take a full truckload or a container or that order of magnitude or it could go to a warehouse for redistribution to a customer base, which could be still OE or replacement. The replacement it's the same scenario. They can either ship directly out of the plant in truckload or in container or they can ship it to a warehouse for which then replacement customers would place orders and receive product from that warehouse. If it's export the region management team makes a decision. They either ship based on the quantity, a container, they will put the product in a container and ship to a port, turn it over to a freight forwarder, and the freight forwarder will decide method, most generally it would be ocean. Then when it arrives it comes into port, clears customs through our forwarders and then we take ownership and deliver it to a warehouse. Or the export could go, if it's a smaller quantity and we're combining sizes, then it could go

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basically to a warehouse that has multiple products and then the order gets consolidated at the warehouse and containerized and then shipped.

Q. Okay.

A. So regardless of those three channels, it's handled either in the same way. They would either ship the product direct, through a container, or it would go to a warehouse for disposition.

Q. Now, in your research for preparing for deposing today, did you determine whether the manufacturing plant in Turkey, the Goodyear Lastikleri T.A.S. plant, whether they manufactured original equipment tires for European model cars which are shipped into the US for sale?

MS. WOOD: Objection.

A. No, I did not. Again, only look at the process of, you know, is theirs similar to ours. Like the specific products, I wasn't interested in, you know, how they --

Q. Okay.

A. -- handled their distribution or their customer base.

Q. And part of what I'm trying to figure out is, for

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example, let's use some Peugeot or Mercedes or some other foreign brand car that's shipped and sold into the US, did you make any inquiry to determine did the Turkey Goodyear plant, for example, manufacture a number of tires to be shipped to Peugeot in France to put on Peugeot automobiles, which in turn got stuck on containers and shipped over to the US, did you make any inquiry to see if any of those transactions were occurring?

MS. WOOD: Objection.

A. Not on the transactional side because, again, I Wouldn't really be that interested in the transaction that takes place with passenger or light truck tires or anything along those lines.

Q. Okay.

A. We would -- my involvement is if I want tires that have a requirement in the customer's place that requests for an order and we don't make it or don't have it, then I will go through the channels of having Europe decide where should the product come from and how they decide to ship it, either warehouse or direct from the plant, and then I'm interested in, one, getting them the order and getting my tires when I want them.

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Q. That's fair enough
A. For our customers.
Q. All right. And to follow-up on that, I take it as part of your inquiry that was not a subject matter that you really inquired in to, that is whether tires from – I'm talking specific about the Goodyear Turkey plant where the tires for the Goodyear Turkey plant were sold in Europe and placed on vehicles which were shipped into the US and sold in various States in United States, including North Carolina?
MS. WOOD: Objection.
A. Yeah, I would not research -- there would be no need to research that.
Q. Okay. As you sit here today do you know whether Goodyear Turkey makes a Goodyear tire that is placed on European manufactured vehicles that are shipped into the United States and sold?
MS. WOOD: Objection.
A. I don't know that.
Q. Okay. Now, let me go to the next companies called Goodyear Dunlop Tires Europe B.V., are you familiar with that particular Goodyear entity?
A. No.
Q. Okay. Do you know anything about whether they

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ship tires into the United States or have shipped tires into the United States in the past three years, did you make any inquiry --

A. No.

Q. -- about that?

A. No.

Q. You did not. Okay So I take it you're not able to answer any questions about whether that particular Goodyear company has shipped tires into the United States or into North Carolina for sale in the past three years, you're not able to answer those questions?

A. No.

Q. Okay. The next is Goodyear Luxembourg Tires SA, are you familiar with the Goodyear Luxembourg Tires SA company?

A. Not the company --

Q. Okay.

A. -- but the plant in Luxembourg.

Q. All right. And tell me about your familiarity with that plant.

A. Well, similar to the Turkey we get some tires that would come through Luxembourg facility. As an example those wide based tires would be made in the Luxembourg facility that would be sourced

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and brought over here.
Q. All right. As you sit here today, do you have any information or working knowledge about the different types of tires that are made in the Goodyear Luxembourg facility?
A. I do not have their authorized line of all the sizes and types.
Q. All right. As part of your investigation did you determine whether Goodyear Luxembourg Tires SA whether any of their tires were sourced over to the US between 2004 and 2007?
MS. WOOD: Objection.
A. Not specifically Luxembourg.
Q. Okay.
A. I looked for the Turkey.
Q. Okay. Just so I understand, did you look for any other facility other than Turkey as far as tires being brought into the US and sold either in the United States or North Carolina, did you look for any other company?
A. What we looked at all of our imports.
Q. Okay. And would all those imports include Goodyear Luxembourg?
A. They would have been an entity that we would have sourced from.

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Q. Okay. And did you determine whether in the last three years whether you sourced tires from Goodyear Luxembourg into US in the last three years?

A. Tires have been sourced --

Q. Okay.

A. -- from Luxembourg, again, of similar nature to the ones that were discussed. Very small numbers and for unique applications and vehicles.

Q. And do you recall what occasions they would have been for and the types of vehicles they were for?

MS. WOOD: Objection.

A. Again, it's the ones we talked about.

Q. Same tires?

A. Yes. It's the cement mixer, front axle and waste haul steer for front end load applications.

Q. So the larger tires, not the smaller tires, such as a boat tire or things like that?

MS. WOOD: Objection.

A. No.

Q. Did you determine the number of tires that were brought into the US and sold in the US market?

A. We have our own records of what the import numbers are in total.

Q. Okay.

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A. We normally don't go down into individual size and number, but we can, you know, we have them.

Q. What was the total number for Goodyear Luxembourg tires?

A. I don't know that --

MS. WOOD: Objection.

A. -- off the top.

Q. You gave me a specific number for the Turkey facility for sales in North Carolina, which was 1,847, did you determine any specific number sold in North Carolina Goodyear Luxembourg SA?

A. Did not look for specific sales into North Carolina other than the Turkey produced.

Q. Okay. And as you sit here today do you have any recollection as to whether the total number of tires sourced, you said total number of tires sourced -- well, sorry -- the total number of tires sourced, you don't have that number or do you have an estimate of that number from your searching this topic?

A. Well --

MS. WOOD: Objection.

A. -- I would have to look and get an exact number.

Q. Okay.

A. But again, it's definitely less than -- on an

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annualized basis probably less than 100,000 tires. On a traditional basis there could be, you know, some instances maybe where it exceeded that, but that's -- I mean, total. That's including Turkey, that's including everything --

Q. You're talking about --

A. -- out of the 20 some million.

Q. -- European sourcing?

A. Total.

Q. Okay. With respect to Goodyear Luxembourg tires, is there a computer database that you can go to and determine the number of tires that were sourced from that facility and brought into the US, and is there a way that you can determine the number of tires that were sourced from Goodyear that were sold in North Carolina?

A. There's no specific database from our side. We would bring in a quantity and the size. To go to a source, we would have to go to Europe and have Europe tell us which countries, you know, rolled up, and then it would, you know, filter over, but basically we bring in the size, we bring in the type and basically we know that information. Again, on the document it might say -- and I don't know, I haven't looked at the document to

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see whether it says that it was, you know, produced in Turkey and we shipped it from England, you know, I have no idea --

Q. All right.

A. -- at that point.

Q. But what I'm trying to get at is similar to you were able to give me a specific number of tires brought into the US --

A. Right.

Q. -- and sold to the North Carolina for the Turkey plant, are you able to do that for your Luxembourg plant?

A. We probably could do a similar --

Q. Analysis?

A. -- analysis.

Q. Okay. What I want to ask you to do is if you can do that for Goodyear Luxembourg and provide that information to counsel. She can object to whatever, but that was part of the purpose of today's inquiry.

A. Okay.

Q. And also the same for Goodyear Dunlop Tires Europe B.V. and for Goodyear Dunlop Tires France, if you could do that for those entities. You can speak with your counsel when we're finished. If

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she objects, that's fine, she can send me a note or tell me about that.
Let me ask about Goodyear SA, are you familiar with Goodyear SA?
A. I am not.
Q. Okay.
A. I mean, these are kind of enterprises and I have no ideas of their direct relationship with manufacturing sources or business sources.
Q. Okay. And so I take it if I was to ask you what tires Goodyear SA may have sourced into or that you sourced from Goodyear SA into the United States and that were sold in North Carolina in the past three years, you would not have that information?
A. I would not have that.
MS. WOOD: Objection.
Q. Okay. And the same is true for Goodyear Dunlop Tires France SA, did you make an inquiry about tires sourced?
A. No.
Q. Okay. And when I say tires sourced, same subject we've been talking about those that were brought into the US and those that were eventually sold in North Carolina?

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A. Well, anything in France there's no production facility for commercial in France.

Q. Okay.

A. So I would not have even considered that.

Q. Okay.

A. So.

Q. Now, even though there's no commercial facility in France that when you say no commercial facility you're talking about --

A. Truck.

Q. -- truck tires? They do make passenger vehicle tires in France I take it?

A. There may be production facility for passenger.

Q. And the same question was whether their truck tires or passenger tires, you didn't make an inquiry as to whether some were sourced and brought over here?

A. No.

Q. Okay. What I would ask you to do, and this is subject to objection by counsel, but I want this on the record, is that you do a similar inquiry for the Goodyear Dunlop Tires B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Dunlop Tires France SA, the same inquiry that you made

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for Goodyear Lastikleri, the Turkey facility, to determine were tires sourced in the last three years brought into the US and were any of those tires eventually sold in North Carolina?

A. Yes. And just looking in these some are holding companies, so they wouldn't have sourced anything.

Q. Fine.

A. So they have no bearing on the equation at all.

Q. Okay.

A. I mean.

Q. And that's fair. You've answered part of the question there, they don't produce --

A. They don't produce, sell, distribute, label --

Q. Okay.

A. -- tires, you know, but the Dunlop one, I Didn't -- the Goodyear Dunlop based on the way it's written, and somebody would have to validate that, I would say that that probably is the case with it as it is with Goodyear SA, and the Goodyear Dunlop Tires France, the three of those probably are corporate enterprises that have different structures, but they do not in any way design, manufacturer, label, ship or distribute subject product or any other manufactured

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product.
Q. Okay. All right. And that would be if you've made an inquiry as to whether those companies by your interpretation haven't, you know, designed, manufactured, labeled or shipped tires into the US and eventually into North Carolina for sale, That's fine, I just -- I would just like to --
A. No, I understand.
Q. -- try to have those questions answered similar to how you did as to the Turkey facility --
A. Right.
Q. -- so that we know were they brought in, were they not brought in, how many were brought in.
A. Yes. Turkey and Luxembourg were the two that would be for commercial products that we would have --
Q. And I don't, just so you understand, this inquiry is not limited just to commercial products, it's limited also -- when I say commercial products that's a broad term, it's not limited just to truck tires, it is to truck tires, passenger tires, any other product that Goodyear in these facilities is manufacturing or producing and in turn sending it into the United States for sale or distribution

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MS. WOOD: Objection.
A. Well, one, they don't send tires into the United States for distribution. We make that determination in this country.
Q. Right.
A. So they would never directly --
Q. I understand.
A. -- through their chain kind of send tires in. They would -- it would be emanating from a request that we would make for a requirement for something that we do not have a vehicle or, you know, domestic source for, and then we would then let Europe then decide how, but they would not deal directly with customers or bring tires into the United States without our approval or sanction.
Q. The originating request comes from Goodyear US to these --
A. Right, right.
Q. -- either your subsidiary corporations or related companies?
A. Right.
Q. Okay. Thank you. I think I understand. Now, other than what you have shared with me today, did you make any additional investigation

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as to the business activities of any of these companies, and when I say any of the companies they are the five different Goodyear companies, which are Goodyear Dunlop Tires B.V., Goodyear Dunlop Tires SA, Goodyear SA, Goodyear Luxembourg Tires SA, and Goodyear Lastikleri T.A.S., did you make any other inquiry about their sales, distribution, marketing of tires in the US, and specifically North Carolina, other than the specific information you provided to me about the tire sales by Goodyear Lastikleri, and you also shared with me some additional tire sales by, I believe, Luxembourg, which you didn't have specific numbers on.

A. Right.

Q. Okay. Do you have any other data on sales other than what you've shared with me today?

A. No.

MR. KIRBY: Okay. All right. I don't think I have any other questions. Thank you, Mr. Kramer, I appreciate it. You may have some questions here.

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DIRECT EXAMINATION OF DONN P. KRAMER

BY MS. WOOD:

Q. I think I have just a couple.
In response to Mr. Kirby's questioning, I just want to make sure that this is clear on the record.
He asked you if you had -- and I'm sorry I Didn't write your exact words, but whether you had knowledge or familiar with Goodyear Dunlop Tires Europe B.V. and I wanted to make sure that I didn't misunderstand your answer.
You do know about that company, I mean you have knowledge of the existence of that company?

A. I know that it's a joint venture.

Q. Okay. And did you -- and in the process of preparing your this deposition, I'm looking at these questions on the deposition notice, is it correct that you looked at all imports in the United States from various entities --

A. Yes.

Q. -- is that correct?
And did you --

A. On commercial.

Q. On commercial products?

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A. Not on passenger or consumer.
Q. And did you make an effort to determine whether any products had been shipped into North Carolina from Goodyear Dunlop Tires Europe B.V.?
A. We did not look because, again, the enterprise is the holding company, so the source when we got the information it gave us here's the tires by size that came into the United States. We went to Europe and asked Europe based on those sizes where did they come from, which was the source plant, and they provided the source plant for those imports on commercial truck.
Q. And none of those were sourced from Goodyear Dunlop Tires Europe B.V.?
A. That's correct.
Q. And none of them were sourced from Goodyear SA; is that correct?
A. Correct. And none from France.
MS. WOOD: I don't think I have any further questions. We will read this.

DONN P. KRAMER

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[1]
[2]
[3] CERTIFICATE
[4] The State of Ohio,) SS:
[5] County of Cuyahoga.)
[6]
[7] I, X. John Revmatas, a Notary Public within and for the State of Ohio, authorized to
[8] administer oaths and to take and certify depositions, do hereby certify that the
[9] above-named witness was by me, before the giving of their deposition, first duly sworn to testify
[10] the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was
[11] reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under
[12] my direction; that this is a true record of the testimony given by the witness; that said
[13] deposition was taken at the aforementioned time, date and place, pursuant to notice or
[14] stipulations of counsel; that I am not a relative or employee or attorney of any of the parties, or
[15] a relative or employee of such attorney or financially interested in this action; that I am
[16] not, nor is the court reporting firm with which I am affiliated, under a contract as defined in
[17] Civil Rule 28(D).
[18] IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this
[19] day of , A.D. 20 .

[20]
[21] X.
John Revmatas, Notary Public, State of Ohio
[22] 1750 Midland Building, Cleveland, Ohio 44115
My commission expires August 27, 2011
[23]
[24]
[25]

NORTH CAROLINA

ONSLOW COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
05 CVS 1922

EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS,

Plaintiffs,

v.

ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and

AMENDED NOTICE OF 30(b)(6) DEPOSITION OF THE GOODYEAR TIRE & RUBBER COMPANY

Plaintiff's Exhibit 1

GOODYEAR DUNLOP
TIRES FRANCE SA.

Defendants.

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the North Carolina Rules of Civil Procedure, the Plaintiffs shall take the deposition upon oral examination of The Goodyear Tire & Rubber Company beginning at 10:00 a.m. on the 28th day of September 2007, at the offices of Roetzel & Andress, 222 S. Main Street, Akron, OH, 44308. The deposition will be taken before a Notary Public or some other officer duly authorized by law to take depositions. The deposition will continue from day to day until completed.

You are required by Rule 30 of the Rules of Civil Procedure to designate one or more officers, directors or managing agents or other persons who consent and are authorized to testify on your behalf, and to have them present themselves at the above time and place for examination upon oral deposition. The representative(s) designated by the above-named defendant shall be knowledgeable and prepared to testify about the following matters:

a. The chain of distribution of the Goodyear Regional RHS tire at issue in this case, and the chain of distribution of any tires or tire products designed, manufactured, labeled, shipped or distributed by Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. or Goodyear Dunlop Tires France SA which are eventually shipped to or sold in the United States or North Carolina.

b. Whether any tires or tire products designed, manufactured, labeled, shipped or distributed by Goodyear Lastikleri T.A.S. were eventually shipped into and/or sold in the U.S. or North Carolina during the past three years, and the nature of those products shipped and/or sold.

c. Whether any tires or tire products designed, manufactured, labeled, shipped or distributed by Goodyear Dunlop Tires Europe B.V. were eventually shipped into and/or sold in the U.S. or North Carolina during the past three years, and the nature of those products shipped and/or sold.

d. Whether any tires or tire products designed, manufactured, labeled, shipped or distributed by Goodyear Luxembourg Tires SA were eventually shipped into and/or sold in the U.S. or North Carolina during the past three years, and the nature of those products shipped and/or sold.

e. Whether any tires or tire products designed, manufactured, labeled, shipped or distributed by Goodyear SA were eventually shipped into and/or sold in the U.S. or North Carolina during the past three years, and if so, the nature of those products shipped and/or sold.

f. Whether any tires or tire products designed, manufactured, labeled, shipped or distributed Goodyear Dunlop Tires France SA were eventually shipped into and/or sold in the U.S. or North Carolina during the past three years, and the nature of those products shipped and/ or sold.

This the 17th day of September. 2007,

KIRBY & HOLT, L.L.P.
/s/ David F. Kirby
David F. Kirby
William B. Bystrynski
Attorneys for Plaintiff
P. O. Box 31665
Raleigh, NC 27622
(919) 881-2111

Prdk 11820.040

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Amended Notice of 30(b)6 Deposition of the Goodyear Tire & Rubber Company** was served on opposing counsel by facsimile transmission and by placing a copy in the United States mail, postage prepaid. addressed to the following:

Ronald C. Dilthey (919) 829-0055
Patterson Dilthey Clay
Bryson & Anderson
L.L.P.
4020 WestChase Blvd.,
Suite 550

Raleigh, NC 27607

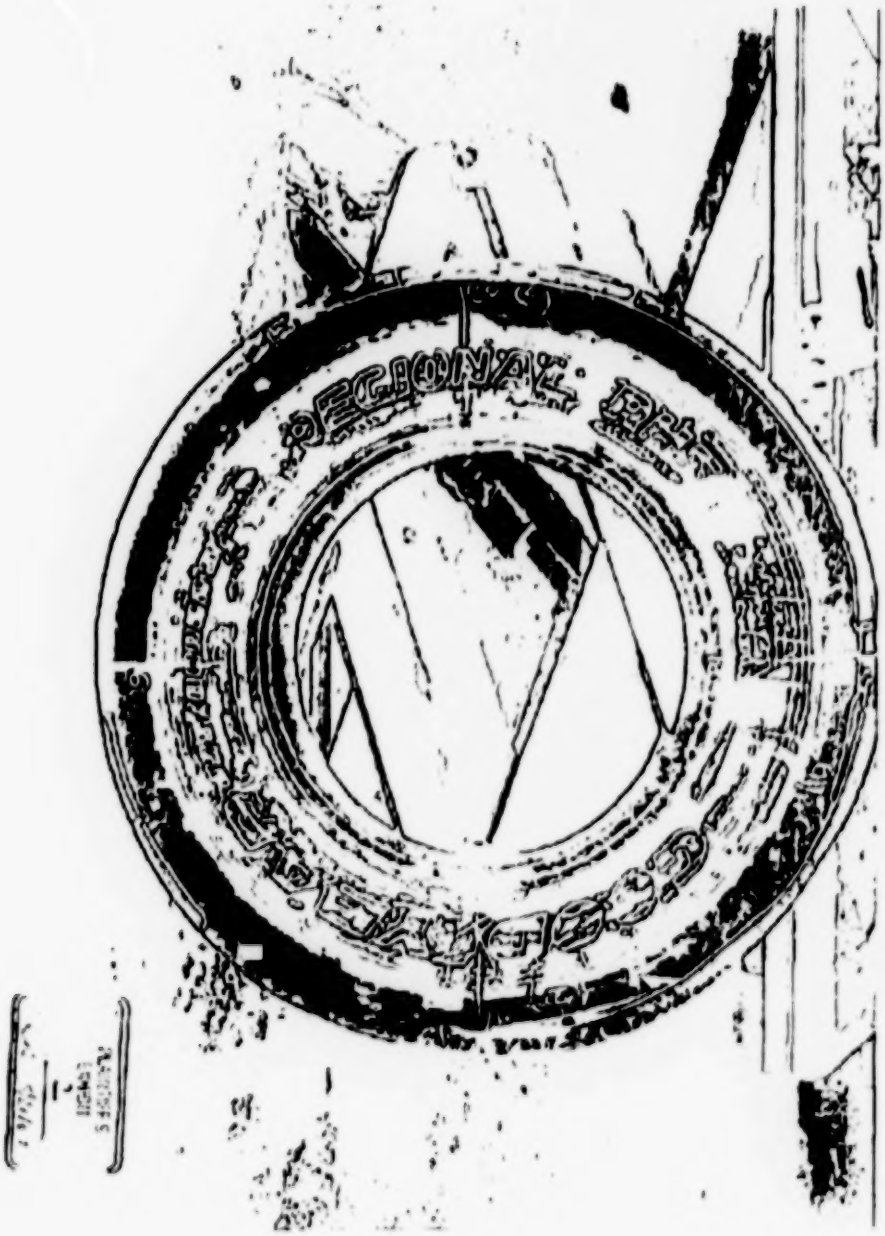
Dan J. McLamb (919) 835-0910
John T. Molleur
Yates, McLamb &
Weyher, L.L.P.
P.O. Box 2889
Raleigh, NC 27602-2889

Charlot F. Wood (336) 714-4101
Bell, Davis & Pitt, P.A.
P. O. Box 21029
Winston-Salem, NC
27120-1029

This the 17th day of September, 2007.

/s/ William B. Bystrynski
William B. Bystrynski

Prdk 11820.040



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STATE OF NORTH CAROLINA ONSLOW COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS Plaintiffs, vs. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA., Defendants.	05-CVS-1922 [SEAL] **AFFIDAVIT OF DONN P. KRAMER**

The undersigned, first being duly sworn, deposes and says:

1. I, Donn P. Kramer, am Director of Product and Supply Chain Management for Commercial Systems for the The Goodyear Tire & Rubber Company. I am over twenty-one years of age and am competent to make this affidavit. The statements herein are within my personal knowledge, and they are true and correct.

2. Subsequent to my deposition on September 28, 2007, I have conducted further inquiry into whether tires or tire products designed, manufactured, labeled, shipped or distributed by Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S., or Goodyear Dunlop Tires France SA were eventually shipped into and/or sold in the United States or North Carolina during the past three years, and the nature of those products shipped and/or sold.

3. Based upon my inquiry, I determined that Goodyear SA did not design, manufacture, label, ship or distribute tires or tire products that were shipped into and/or sold in the United States or North Carolina during the past three years.

4. Based upon my inquiry, I determined that Goodyear Dunlop Tires Europe B.V. did not design, manufacture, label, ship or distribute tires or tire products that were shipped into and/or sold in the United States or North Carolina during the past three years.

5. Based upon my inquiry, I determined that during the period from 2004 through 2007, certain products manufactured by Goodyear Luxembourg

Tires SA were eventually shipped into and/or sold in the United States, and some of those products (approximately 6402 tires) were ultimately shipped to business locations n North Carolina. These products were high performance vehicle passenger tires and commercial truck and trailer tires.

6. The sourcing and distribution process for those products is generally the same as that I described in my deposition testimony with respect to products manufactured by Goodyear Lastikleri T.A.S.

7. Based upon my inquiry, I determined that during the period from 2004 through 2007, certain products manufactured by Goodyear Dunlop Tires France SA were eventually shipped into and/or sold in the United States, and some of those products (approximately 33,923 tires) were ultimately shipped to business locations in North Carolina. These products were passenger vehicle tires.

8. The sourcing and distribution process for those products is generally the same as that I described in my deposition testimony with respect to products manufactured by Goodyear Lastikleri T.A.S.

9. Based upon my inquiry, I determined that during the period from 2004 through 2007, certain products manufactured by Goodyear Lastikleri T.A.S. were eventually shipped into and/or sold in the United States, and some of those products (approximately 4,059 tires) were ultimately shipped to business locations in North Carolina. These products were passenger vehicle tires.

10. The sourcing and distribution process for those products is generally the same as that I described in my deposition testimony.

This the 28 day of November, 2007.

/s/

DONN P. KRAMER

Summit County, Ohio

Signed and sworn to before me this day by DONN P. KRAMER

Date: 11/28/07 /s/

Official Signature of Notary

Notary's printed or typed name, Notary Public

My commission expires:

[SEAL]

NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE	
ONSLOW COUNTY	SUPERIOR COURT DIVISION	
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS, Plaintiffs, v. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA.,	05 CVS 1922 **MOTION FOR REHEARING** [SEAL]	

Plaintiffs move the court, pursuant to Rule 7 of the North Carolina Rules of Civil Procedure, for

rehearing of the foreign Goodyear defendants' motions to dismiss for lack of personal jurisdiction and further show the court as follows:

1. Since the initial hearing in this matter, plaintiffs have taken a 30(b)(6) deposition of Goodyear Tire & Rubber Company that provides further details about the minimum contacts the defendants have with North Carolina.

2. Since the initial hearing on this matter, defendant has provided an affidavit that provides additional information about minimum contacts the defendants have with North Carolina.

In the interest of justice, plaintiffs move the court to rehear defendants' motions to dismiss so that the court may consider this additional information.

This is the 21st day of November, 2007.

KIRBY & HOLT, L.L.P.

David F. Kirby
William B. Bystrynski
Attorneys for Plaintiffs
P.O. Box 31665
Raleigh, NC 27622
(919) 881-2111

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Motion for Rehearing** was served upon the opposing counsel by placing a copy in the United States mail, postage prepaid, addressed to the following:

Ronald C. Dilthey, Esq.
Patterson Dilthey Clay Bryson & Anderson L.L.P.
4020 WestChase Blvd., Suite 550
Raleigh, NC 27607

Dan J. McLamb
John T. Molleur, Esq.
Yates, McLamb & Weyher, L.L.P.
P.O. Box 2889
Raleigh, NC 27602-2889

Charlot F. Wood
Bell, Davis & Pitt, P.A.
P.O. Box 21029
Winston-Salem, NC 27120-1029

This the 21st day of November, 2007.

/s/
William B. Bystrynski

NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
ONSLOW COUNTY	SUPERIOR COURT DIVISION
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS, Plaintiffs, v. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA., Defendants.	05 CVS 1922 **NOTICE OF HEARING** [SEAL] Filed: 26 Nov. 07

PLEASE TAKE NOTICE that the plaintiffs, through counsel, will bring on for hearing its Motion for Rehearing before the Court at the Onslow County Courthouse on December 10, 2007, at 10:00 a.m. or as soon thereafter as counsel can be heard.

This is the 21st day of November, 2007.

KIRBY & HOLT, L.L.P.

David F. Kirby
William B. Bystrynski
Attorneys for Plaintiffs
P.O. Box 31665
Raleigh, NC 27622
(919) 881-2111

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Notice of Hearing** was served upon the opposing counsel by placing a copy in the United States mail, postage prepaid, addressed to the following:

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Charlot F. Wood
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P.O. Box 21029
Winston-Salem, NC 27120-1029

This the 21st day of November, 2007.

/s/
William B. Bystrynski

NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE	
ONSLOW COUNTY	SUPERIOR COURT DIVISION	
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS, Plaintiffs, v. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA., Defendants.	) 05 CVS 1922))) **NOTICE OF**) **VOLUNTARY**) **DISMISSAL OF**) **DEFENDANT**) **GOODYEAR**) **DUNLOP TIRES**) **EUROPE B.V. AND**) **DEFENDANT**) **GOODYEAR SA,**) **WITHOUT**) **PREJUDICE**	

NOW COME plaintiffs, pursuant to Rule 41(a)(1) of the North Carolina Rules of Civil Procedure, and voluntarily dismiss their claims against defendant Goodyear Dunlop Tires Europe B.V., and against defendant Goodyear SA, only, without prejudice.

This is the 5th day of November, 2007.

KIRBY & HOLT, L.L.P.

David F. Kirby
William B. Bystrynski
Attorneys for Plaintiffs
P.O. Box 31665
Raleigh, NC 27622
(919) 881-2111

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Notice of Voluntary Dismissal** was served upon the opposing party by facsimile transmission and by placing a copy in the United States mail, postage prepaid, addressed to the following:

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Charlot F. Wood (Fax: 336-714-4101)
Bell, Davis & Pitt, P.A.
P.O. Box 21029
Winston-Salem, NC 27120-1029

This the 5th day of December, 2007.

/s/
William B. Bystrynski

STATE OF NORTH CAROLINA ONSLOW COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS, Plaintiffs, vs. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA., Defendants.	05-CVS-1922 **NOTICE OF APPEAL**

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Defendants Goodyear Luxembourg Tires SA, Goodyear Lastikleri T.A.S., and Goodyear Dunlop Tires France SA hereby give notice of appeal to the Court of Appeals of North Carolina from the Order of Judge Gary E. Trawick entered on May 1, 2008 in the Superior Court of Onslow County, denying the Motions to Dismiss for lack of personal jurisdiction of Defendants Goodyear Luxembourg Tires SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA.

Respectfully submitted this the 9th day of May, 2008.

/s/
WILLIAM K. DAVIS
State Bar No. 1117

/s/
CHARLOT F. WOOD
State Bar No. 16899

/s/
KEVIN G. WILLIAMS
State Bar No. 25760
Attorney for Defendants
The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. and

Goodyear Dunlop Tires France SA

OF COUNSEL:
BELL, DAVIS & PITT, P.A.
P.O. Box 21029
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Telephone: (336) 722-3700
Facsimile: (336) 714-4101

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing in the above captioned matter upon all other parties to this cause by:

hand delivering a copy hereof, properly addressed to the parties listed hereinbelow:

or by

X depositing a copy hereof in a first class postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, properly addressed to the parties listed hereinbelow.

This the 9th day of May, 2007.

/s/
CHARLOT F. WOOD
State Bar No. 16899

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CERTIFICATE OF SETTLEMENT OF RECORD ON APPEAL

Counsel for Defendants-Appellants hereby certify as follows:

1. Counsel for Defendants-Appellants timely served Record on Appeal on Plaintiffs-Appellees on June 13, 2008.

2. Counsel for Plaintiffs-Appellees timely served their Objections to Proposed Record on Appeal on July 16, 2008.

3. Counsel for Defendants-Appellants and Counsel for Plaintiffs-Appellees resolved the issues raised by the Objections of Counsel for Plaintiffs-Appellees, and the Record on Appeal was accordingly settled as of July 26, 2008.

4. Accordingly, the foregoing, including the transcripts described in the Statements of Transcript Options accompanying this Record, constitutes the Record on Appeal pursuant to Rule 11 of the North Carolina Rules of Appellate Procedure.

/s/
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CHARLOT F. WOOD
KEVIN G. WILLIAMS
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ASSIGNMENTS OF ERROR

Defendants assign as error:

1. The Trial Court's Finding of Fact No. 4, on the ground that there was insufficient competent evidence of record to support it.

R p. 178

2. The Trial Court's Finding of Fact No. 5, on the ground that there was insufficient competent evidence of record to support it.

R p. 178-79.

3. The Trial Court's Finding of Fact No. 9, on the ground that there was insufficient competent evidence of record to support it.

R p. 179.

4. The Trial Court's Finding of Fact No. 10, on the ground that there was insufficient competent evidence of record to support it.

R p. 179-80.

5. The Trial Court's Finding of Fact No. 11, on the ground that there was insufficient competent evidence of record to support it.

R p. 180.

6. The Trial Court's Finding of Fact No. 12, on the ground that there was insufficient competent evidence of record to support it.

R p. 180.

7. The Trial Court's Finding of Fact No. 13, on the ground that there was insufficient competent evidence of record to support it.

R p. 180.

8. The Trial Court's Finding of Fact No. 14, on the ground that there was insufficient competent evidence of record to support it.

R p. 180.

9. The Trial Court's Finding of Fact No. 15, on the ground that there was insufficient competent evidence of record to support it.

R p. 180.

10. The Trial Court's Finding of Fact No. 16, on the ground that there was insufficient competent evidence of record to support it.

R p. 180.

11. The Trial Court's Finding of Fact No. 17, on the ground that there was insufficient competent evidence of record to support it.

R p. 180-81.

12. The Trial Court's Finding of Fact No. 18, on the ground that there was insufficient competent evidence of record to support it.

R p. 181.

13. The Trial Court's Finding of Fact No. 19, on the ground that there was insufficient competent evidence of record to support it.

R p. 181.

14. The Trial Court's Finding of Fact No. 20, on the ground that there was insufficient competent evidence of record to support it.

R p. 181.

15. The Trial Court's Finding of Fact No. 21, on the ground that there was insufficient competent evidence of record to support it.

R p. 181.

16. The Trial Court's Finding of Fact No. 22, on the ground that there was insufficient competent evidence of record to support it.

R p. 181.

17. The Trial Court's Finding of Fact No. 23, on the ground that there was insufficient competent evidence of record to support it.

R p. 182.

18. The Trial Court's Finding of Fact No. 24, on the ground that there was insufficient competent evidence of record to support it.

R p. 182.

19. The Trial Court's Conclusion of Law No. 1, on the ground that there was not sufficient record or legal authority from which to conclude that the Defendants have continuous and systematic ties with the State of North Carolina.

R p. 182.

20. The Trial Court's Conclusion of Law No. 2, on the ground that there was not sufficient competent evidence of record or legal authority from which to conclude that the Defendants' activities in North Carolina are substantial.

R p. 182.

21. The Trial Court's Conclusion of Law No. 3, on the ground that there was not sufficient competent evidence of record or legal authority from which to conclude that the quantity of the Defendants' contacts with North Carolina, the nature and quality of those contacts, the source and connection of the cause of action to the contacts, the

interest of North Carolina in this cause of action, and the convenience of the parties all weigh in favor of the exercise of general jurisdiction over the Defendants.

R p. 182.

22. The Trial Court's Conclusion of Law No. 4, on the that there was not sufficient competent evidence of or legal authority from which to conclude that the exercise of general jurisdiction over the Defendants comports with Due Process and does not offend traditional notions of fair play and justice.

R p. 182.

23. The Trial Court's denial of Defendants' Motions to Dismiss for lack of jurisdiction over the person under N.C. R. Civ. P. 12(b) (2) and N.C. Gen. Stat. § 1-75.4 on the ground that the uncontested facts contained in Defendants' affidavits in support of the Motions show that no grounds for personal jurisdiction over the Defendants existed.

R p. 182.

24. The Trial Court's denial of Defendants' Motions to Dismiss for lack of jurisdiction over the person under N.C. R. Civ. P. 12(b) (2) and N.C. Gen. Stat. § 1-75.4 on the ground that there was not sufficient competent evidence of record to support the Court's exercise of general jurisdiction over the Defendants pursuant to North Carolina law.

R p. 182.

IDENTIFICATION OF COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Proposed Record on Appeal by depositing a copy hereof in a postpaid wrapper in a post office or official depository by first class mail under the exclusive care and custody of the United States Post Office Department properly addressed to following:

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This the 13th day of June, 2008.

/s/
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Attorneys for Defendants-Appellants

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
	SUPERIOR COURT DIVISION
ONSLOW COUNTY	05-CVS-1922

EDGAR D. BROWN and PAMELA, BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, And KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS,

Plaintiffs,

vs.

ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA.

Defendants.

BRIEF OF DEFENDANTS GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S., AND GOODYEAR DUNLOP TIRES FRANCE SA IN SUPPORT OF MOTIONS TO DISMISS

STATEMENT OF THE CASE

On June 24, 2005, Plaintiffs filed a wrongful death action against Eric. R. Meter, French Soccer

Network, European Soccer Network, and North Carolina Youth Soccer Association, Inc. On April 17, 2006, Plaintiffs filed an Amended Complaint (unverified), adding as defendants The Goodyear Tire & Rubber Company ("Goodyear"), Goodyear Dunlop Tires Europe B.V. ("Goodyear Europe"), Goodyear Luxembourg Tires SA ("Goodyear Luxembourg"), Goodyear SA, Goodyear Lastikleri T.A.S. ("Goodyear Turkey"), and Goodyear Dunlop Tires France SA ("Goodyear Dunlop France"). (Goodyear Europe, Goodyear Luxembourg, Goodyear SA, Goodyear Turkey, and Goodyear Dunlop France are sometimes hereinafter referred to as "the foreign Goodyear entities.")

The foreign Goodyear entities were served with the Amended Complaint during December 2006 and February 2007. This matter is before the court on the motions of Goodyear Europe, Goodyear Luxembourg, Goodyear SA, Goodyear Turkey, and Goodyear Dunlop France to dismiss the actions against them for lack of personal jurisdiction pursuant to Rule 12(b)(2) of the North Carolina Rules of Civil Procedure.

STATEMENT OF FACTS

This case arises out of an April 18, 2004 bus accident near Mitry-Mory, France, which resulted in the tragic deaths of Julian David Brown and Matthew M. Helms. Julian and David had traveled to France to play soccer with the North Carolina Youth Soccer Association ("NCYSA"), and the accident occurred on the way to the airport for the return trip home. The NCYSA trip included a group of teenaged soccer players from North Carolina, their coaches and several other adults. Plaintiffs, the parents of Julian

and Matthew, allege that Eric. R. Meter and his companies, the French Soccer Network and European Soccer Network (the "Meter Defendants"), and the North Carolina Youth Soccer Association, Inc. ("NCYSA") jointly planned and organized the trip and were responsible for all travel arrangements. Plaintiffs do not allege any relationship between the Meter defendants and the NCYSA on the one hand, and Goodyear and the foreign Goodyear entities on the other hand.

With respect to the foreign Goodyear entities, Plaintiffs allege that:

- Goodyear Europe "is a Belgium corporation with its principal place of business in Brussels, Belgium" (Complaint ¶10);
- Goodyear Luxembourg "is a Luxembourg corporation with its principal place of business in Colmar-Berg, Luxembourg" (Complaint ¶11);
- Goodyear SA "is a Luxembourg corporation with its principal place of business in Colmar-Berg, Luxembourg" (Complaint ¶12);
- Goodyear Turkey "is a Turkish corporation with its principal place of business in Turkey" (Complaint ¶14); and
- Goodyear Dunlop France "is a French corporation with its principal place of business in France" (Complaint ¶13).

Plaintiffs allege that both Goodyear and the foreign Goodyear entities (all of which Plaintiffs refer to jointly as "The Goodyear defendants") "are in the business of designing, testing, manufacturing and selling tires for automobiles, trucks and buses that

are marketed, sold and used throughout the world, including Europe, the United States and North Carolina." (Complaint ¶17) Plaintiffs further allege that, upon information and belief, the bus involved in the accident was "equipped with tires designed, manufactured and sold by [Goodyear, Goodyear Europe, Goodyear Luxembourg, Goodyear SA, Goodyear Turkey, and Goodyear Dunlop France]" and that one of the tires "failed" during the course of the accident. (Complaint ¶¶42, 43) Further, Plaintiffs allege that the tire in issue "was placed into the stream of commerce by being sold in France, and was used in France on a bus licensed to operate in France." (Complaint ¶¶130, 102) The bus involved in the accident was owned by a French corporation and driven by a French driver. (Complaint ¶¶28, 31, 102) Plaintiffs have not alleged any act connected with the State of North Carolina by any of the foreign Goodyear entities.

In support of their motions to dismiss, each of the foreign Goodyear entities has submitted an affidavit by an executive, director, and/or officer of the company who has personal knowledge of the facts set out in the affidavit. Each affidavit confirms that the respective business entity was organized under the laws of a foreign jurisdiction and that its business is located outside the United States. As established by their respective affidavits, none of the foreign Goodyear entities conducts business in North Carolina. Each affiant confirms, among other things, that the entity does not conduct or solicit business in North Carolina, that it does not provide services or sell products in North Carolina, that it does not advertise or promote its products in North Carolina, that it has no place of business, property, or bank

accounts in North Carolina, and that it has never been authorized or sought authorization to do business in North Carolina.

ARGUMENT

The North Carolina courts lack personal jurisdiction over the foreign Goodyear entities, both under North Carolina's long-arm statute and under the Due Process Clause of the Fourteenth Amendment of the United States Constitution. In order to establish personal jurisdiction, the court engages in a two-part analysis. The court must first determine whether N.C.G.S. § 1-75.4, North Carolina's "long-arm statute," confers jurisdiction over the defendant. If so, the court must then determine whether the exercise of jurisdiction meets constitutional standards of due process. Charter Medical, Ltd. v. Zigmet, Inc., 173 N.C. App. 213, 617 S.E.2d 352 (2005); Cameron-Brown Co. v. Daves, 83 N.C. App. 281, 350 S.E.2d 111 (1986).

When a court's personal jurisdiction over a defendant is challenged pursuant to Rule 12(b)(2) of the North Carolina Rules of Civil Procedure, the burden is on the plaintiff to prove the existence of jurisdiction by showing the statutory grounds for personal jurisdiction. Marion v. Long, 72 N.C. App. 585, 325 S.E.2d 300, cert. denied and appeal dismissed, 313 N.C. 604, 330 S.E.2d 612 (1985). In the instant case, Plaintiffs are unable to meet this burden.

A. There are no grounds for jurisdiction over the foreign Goodyear entities under North Carolina's long-arm statute, N.C.G.S. § 1-75.4.

Plaintiffs have not alleged any act by any of the Goodyear defendants connected with the State of

North Carolina. Rather, plaintiffs attempt to allege grounds for personal jurisdiction by simply grouping all of the Goodyear defendants together and broadly alleging that "they" do business throughout the world, including North Carolina. Such conclusory allegations are clearly insufficient to support a finding of jurisdiction under North Carolina's long-arm statute, N.C.G.S. § 1-75.4.

Plaintiffs have not asserted jurisdiction under any specific section of N.C.G.S. § 1-75.4. Two of the grounds for jurisdiction set out in N.C.G.S. § 1-75.4 deal specifically with wrongful death actions. N.C.G.S. § 1-75.4(3) provides for jurisdiction in actions for "wrongful death within or without this State arising out of an act or omission within this State by the defendant." N.C.G.S. § 1-75.4(4) applies to actions for "wrongful death occurring within this State." Clearly, neither of these sections is applicable to the instant case, in which the accident and all actions allegedly attributable to the Goodyear defendants occurred in France. Therefore, the only provision under which the plaintiffs could seek to establish jurisdiction is N.C.G.S. §1-75.4(1), which confers jurisdiction on a defendant "who, when service of process is made...[i]s engaged in substantial activity within this State."

As stated in the affidavits of the respective foreign Goodyear entities in support of their motions, none of them have engaged in business in North Carolina. None of the foreign Goodyear entities have, among other things, conducted or solicited business in North Carolina, provided services or sold products in North Carolina, advertised or promoted their products in North Carolina, or entered into a contract

in North Carolina. None have a place of business, property, or bank accounts in North Carolina, and none have been authorized or sought authorization to do business in North Carolina. As established by their respective affidavits, none of the foreign Goodyear entities is or has been engaged in anv activity within the state, much less substantial activity, and therefore N.C.G.S. §1-75.4(1), cannot confer personal jurisdiction over any of the foreign Goodyear defendants.

B. The Court's exercise of jurisdiction over the foreign Goodyear entities would violate constitutional due process standards.

Even if the plaintiffs could show that North Carolina's long-arm statute subjects the foreign Goodyear entities to jurisdiction in North Carolina, the exercise of jurisdiction over the foreign Goodyear entities would violate constitutional due process. A court cannot expand the reach of state jurisdiction over non-resident defendants beyond due process limitations; a foreign defendant must have sufficient minimum contacts with North Carolina to support jurisdiction. First Nat'l Bank v. General Funding Corp., 30 N.C. App. 172, 226 S.E.2d 527 (1976).

Due process requirements may be satisfied by a showing of either "specific jurisdiction" or "general jurisdiction." Specific jurisdiction may be exercised over a defendant only when the cause of action arose within the state or is related to a defendant's activities within the state. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414, 104 S. Ct. 1868, 1872, 80 L.Ed. 2d 404, 411 (1984). Specific jurisdiction is clearly inapplicable on the facts of the instant case, since the cause of action arose in France

and all alleged activities connected with the tire in issue occurred in France.

In order to meet constitutional due process requirements for "general jurisdiction," a defendant's activities in the forum state must be "continuous and systematic." Id. A defendant must have "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Tejal Vyas, LLC v. Carriage Park Limited Partnership, 166 N.C. App. 34, 600 S.E.2d 881 (2004) (citing International Shoe Co., 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L.Ed. 95, 102 (1945) (citations omitted). To establish such minimum contacts, the defendant must have "purposefully availed itself of the privilege of conducting activities in the forum state and invoked the benefits and protections of the laws of North Carolina." Id. (citations omitted). Further, the contacts "must be such that the defendant should 'reasonably anticipate being haled into' a North Carolina court." Id. (citing Cherry Bekaret & Holland v. Brown, 99 N.C. App. 626, 632, 394 S.E.2d 651, 656 (1990).

Factors considered by North Carolina courts in determining whether sufficient minimum contacts exist to support personal jurisdiction over a foreign defendant include: (1) the quantity of contacts, (2) the nature and quality of the contacts, (3) the source and connection of the cause of action to the contacts, (4) the interest of the forum state, and (5) the convenience of the parties. See, e.g., Tejal Vyas 166 N.C. App. at 40, 600 S.E.2d at 886, (quoting Cherry Bekaret & Holland, 99 N.C. App. at 632, 394 S.E.2d

at 655); Charter Medical, Ltd. v. Zigmed, Inc., 173 N.C. App. 213, 617 S.E.2d 352 (2005).

A review of the factual allegations of Plaintiffs' Complaint and the affidavits of the foreign Goodyear entities in light of the factors set out above clearly establishes the absence of contacts which would support personal jurisdiction over the foreign Goodyear entities by the North Carolina court. The foreign Goodyear entities not only lack minimum contacts, but they lack any contacts with North Carolina. It would be patently unreasonable to extend jurisdiction over a foreign corporation that has not conducted business in North Carolina, particularly in a case in which all activities even arguably connected with the product and the accident in question occurred in France.

In summary, there is absolutely no indication that any of the foreign Goodyear entities has purposefully availed itself of the privilege of conducting activities in North Carolina or invoked the benefits and protections of the North Carolina laws. None of the foreign Goodyear entities has engaged in any activity from which they could anticipate being "haled into court" in North Carolina. Requiring the foreign Goodyear defendants to defend this action in North Carolina would most certainly offend traditional notions of fair play and substantial justice.

CONCLUSION

For the reasons stated above, defendants Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S., and Goodyear Dunlop Tires France SA, respectfully request that the Court dismiss

Plaintiffs' claims against them, with prejudice, on the grounds that the court lacks personal jurisdiction over these defendants.

This the 7th day of June, 2007.

/s/ William K. Davis
WILLIAM K. DAVIS
State Bar No. 1117

/s/ Charlot F. Wood
CHARLOT F. WOOD
State Bar No. 16899

/s/ Kevin G. Williams
KEVIN G. WILLIAMS
State Bar No. 25760
Attorney for Defendants
The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing in the above captioned matter upon all other parties to this cause by:

hand delivering a copy hereof, properly addressed to the parties listed hereinbelow:

or by

depositing a copy hereof in a first class postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, properly addressed to the parties listed hereinbelow.

or by

X facsimile.

This the 7th day of June, 2007.

/s/ Charlot F. Wood
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NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
ONSLOW COUNTY	SUPERIOR COURT DIVISION 05 CVS 1922

EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS,

Plaintiffs,

v.

ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO GOODYEAR DEFENDANTS' MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION

GOODYEAR DUNLOP
TIRES FRANCE SA.,
Defendants.

This is a wrongful death case involving two 13-year-old boys. Matthew McCoy Helms of Jacksonville and Julian David Brown of Charlotte were killed in a bus wreck near Paris, France.

The two boys were soccer players who were considered by the North Carolina Youth Soccer Association as the best young players their age from North Carolina. The boys were chosen to travel to Europe to participate in soccer tournaments against international competition. On April 18, 2004, as they were on a bus headed to the airport in Paris to return home, one of the bus' tires failed when its plies separated. The bus driver lost control of the bus and it overturned.

Matthew Helms, who was seated in the rear of the bus, suffered severe upper body crush injuries and lacerations in the crash. He died at the scene.

Julian Brown was thrown from the bus and trapped underneath it. He suffered life-threatening injuries as a result of the crash, including two broken legs, a broken jaw, severe pelvic fractures, internal bleeding and severe head trauma. He was taken by ambulance to a hospital in Paris for treatment and underwent surgery, but died eight days later.

French authorities involved in a criminal negligent homicide investigation that arose after this accident determined that one of the bus tires was defective. Plaintiffs filed suit in Onslow County against several defendants, including Goodyear Tire

and Rubber Co. and its subsidiary corporations that designed, manufactured and distributed the tire for sale in France, and in the United States. Plaintiffs alleged that the tire was defectively manufactured and designed, and breached express and implied warranties.

The foreign Goodyear entities – Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S. and Goodyear Dunlop Tires France SA – now have moved the court to dismiss the case based on lack of personal jurisdiction, saying they lack the minimum contacts needed to exercise personal jurisdiction against them. North Carolina courts have held that foreign subsidiaries, however, may not escape personal jurisdiction simply because they lack direct contacts with North Carolina if they place goods into the stream of commerce to be sold or used in North Carolina.

ARGUMENT

I. The Goodyear defendants have placed their tires into the stream of commerce to be used and sold in the United States and North Carolina, satisfying the due process requirement that they have minimum contacts with the State.

a. The N.C. long arm statute supports jurisdiction.

Traditionally, North Carolina courts have stated that there is a two-step process for determining whether personal jurisdiction exists. First, is there jurisdiction under the North Carolina long-arm statute, N.C. Gen. Stat. § 1-75.4. Second, will the exercise of jurisdiction over the defendant

comport with constitutional standards of due process. *Charter Medical v. Zigmed*, 173 N.C. App. 213, 216, 617 S.E.2d 352, 354 (2005).

Plaintiffs contend that they are entitled to assert personal jurisdiction under the long-arm statute under § 1-75.4(1)(d), which states that personal jurisdiction is proper:

> "In any action, whether the claim arises within or without this State, in which a claim is asserted against a party who when service of process is made upon such party: ...
>
> * * *
>
> d. Is engaged in substantial activity within this State, whether such activity is wholly interstate, intrastate or otherwise.

But the actual wording of the long arm statute is of little consequence, since the North Carolina Supreme Court has held that the legislature intended the long arm statute to allow suit against foreign entities to the fullest extent allowed by the U.S. Constitution.

"By the enactment of G.S. 1-75.4(1)(d), it is apparent that the General Assembly intended to make available to the North Carolina courts the full jurisdictional powers permissible under federal due process. . . . Thus, we hold that G.S. 1-75.4(1)(d) applies to defendant and, statutorily, grants the courts of North Carolina the opportunity to exercise jurisdiction over defendant to the extent allowed by due process." *Dillon v. Numismatic Funding Corp.*, 291 N.C. 674, 676, 231 S.E.2d 629, 630-31 (1977).

"Our long-arm statute is designed to confer jurisdiction over nonresident defendants to the fullest extent possible under the due process clause of the Fourteenth Amendment." *Tart v. Prescott's Pharmacies, Inc.*, 118 N.C. App. 516, 522, 456 S.E.2d 121, 125 (1995).

That means that the only relevant inquiry is whether due process protections are met: "Since the North Carolina legislature designed the long-arm statute to extend personal jurisdiction to the limits permitted by due process, the two-step inquiry merges into one question: whether the exercise of jurisdiction comports with due process." *Lang v. Lang*, 157 N.C. App. 703, 708, 579 S.E.2d 919, 922 (2003).

b. Defendants manufactured and distributed their product to avail themselves of the U.S. and North Carolina market, placing their tire in the stream of commerce likely to reach North Carolina.

1. Plaintiffs' allegations and evidence are taken as true.

The defendant corporations have filed affidavits that state that they do not directly conduct business in North Carolina, and therefore are not subject to suit here. But North Carolina courts have consistently held that the foreign subsidiaries of corporations cannot avoid being subject to personal jurisdiction by funneling their products through subsidiaries or other enterprises.

In analyzing the due process question, it is important to note that plaintiffs allegations are taken as true. In this case, plaintiff has alleged: that the defective tire was designed, manufactured and sold

by Goodyear and its foreign subsidiaries. Complaint, ¶17.

Also, the Goodyear defendants attempted to manufacture the tire in compliance with U.S. Department of Transportation regulations, in anticipation that the tire would be used in the United States and North Carolina. Complaint, ¶104.

In addition, plaintiffs have served on the defendants the affidavit of Robert C. Ochs, an engineer with 25 years of experience in the tire industry, working with Michelin Tire in France and the United States. Mr. Ochs traveled to France and personally examined the tire involved in this wreck. He stated in his affidavit:

> 11. Based on the serial number on the tire, which is required by the U.S. Department of Transportation for tires sold in the United States, the tire was manufactured at a Goodyear plant in Izmit, Turkey, owned by Goodyear Lastikleri T.A.S.
>
> 12. The tire at issue contained additional U.S. Department of Transportation markings that were placed there to allow the tire to be sold in the United States.
>
> 13. The tire at issue contained information showing that it was manufactured as qualified for sale in the United States.
>
> 14. The tire at issue has a U.S. code listing load and pressure ratings that conform to United States standards set by the Tire and Rim Association, the standardizing organization for the tire industry in the United States.

> 15. The tire at issue contains a "Safety Warning," written in English, that conforms to the warnings found on every tire for sale in the United States.
>
> 16. All of the information found printed on the tire is written in English, and the tire was manufactured and labeled in such a way as to allow it to be sold in the United States.
>
> 17. Based on my knowledge of tire manufacturing and the European tire market, this tire was designed, manufactured and marketed for sale worldwide, including sale in the United States and North Carolina.

Aff. of Robert Ochs.

Defendants, therefore, designed the tire for sale in the U.S. market, wrote all of the instructions in English for sale in the U.S. market, wrote a safety warning in English that is required for the U.S. market, and designed, marketed and sold the tire in the United States and North Carolina.

2. The U.S. Supreme Court and North Carolina courts repeatedly have held that companies that place merchandise in the stream of commerce for a market are subject to suit in that forum state.

The U.S. Supreme Court held in *World- Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559 (1980), that a manufacturer or distributor who places an item in the stream of commerce, even indirectly, attempting to serve a market, it is subject to suit in that market.

> If the sale of a product of a **manufacturer or distributor** such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly **or indirectly**, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

World-Wide Volkswagen at 297-98, 100 S.Ct. at 567 (emphasis added).

The court added that the issue is whether "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Id.* at 297, 100 S.Ct. at 567.

In addition, North Carolina courts have found that foreign corporations that place their goods into the stream of commerce, attempting to reach the U.S. and not restricting which state in which they are sold, are subject to jurisdiction here.

For example, in *Cox v. Hozelock, Ltd.*, 105 N.C. App. 52, 411 S.E.2d 640 (1992), a North Carolina resident was injured when a water pressure sprayer manufactured in England exploded. The manufacturer sought to dismiss, claiming there was lack of personal jurisdiction in North Carolina.

The English company had sold the sprayers to a distributor in Pennsylvania, called Geiger, but had no contacts with North Carolina. The Court upheld personal jurisdiction:

> Without question, this defendant purposefully and intentionally placed the product in the stream of interstate commerce. . . . At no time did defendant attempt to limit its area of distribution so as to exclude North Carolina. These facts therefore indicate defendant knew or reasonably should have known that, due to its relationship with Geiger, its products would be used in states other than Pennsylvania. . . . [D]efendant sought to expand its operations so as to reap profits in the U.S. marketplace. As such, defendant availed itself of the laws of these various states. Consistent with the notions of due process and fairness defendant could then reasonably expect to be subject to the jurisdictions of the courts in those states, so that the exercise of personal jurisdiction over the defendant by one of those states, North Carolina, did not violate the Due Process Clause.

Cox at 55-56, 411 S.E.2d at 643.

Most significantly, the Court explicitly stated that the sole act of putting a product into the stream of commerce provides sufficient grounds for exercising personal jurisdiction over a foreign defendant.

> In conformity with the trend of North Carolina case law, we uphold the stream of

> commerce doctrine and find it consistent with the federal Due Process Clause. We hold the sole act of a manufacturer's intentional injection of his product into the stream of commerce provides sufficient grounds for a forum state's exercise of personal jurisdiction over the foreign manufacturer defendant. Pursuant to the facts in this case, the North Carolina court may properly invoke personal jurisdiction over defendant.

Id at 57-58, 411 S.E.2d at 644 (emphasis added).

The Court of Appeals dealt with a similar situation in *Warzynski v. Empire Comfort Systems, Inc.*, 102 N.C. App. 222, 401 S.E.2d 801 (1991). In that case, Safel, a Spanish manufacturer of a gas heater, sold the heaters to an Illinois distributor, Empire. That distributor in turn sold some beaters to a North Carolina distributor, who sold them to a North Carolina gas company, who in turn sold two to the plaintiffs' family.

Safel argued that it was not subject to personal jurisdiction in North Carolina, but the court disagreed:

> We also find no merit in Safel's argument that there was no basis for the court's exercise of personal jurisdiction. Under *Bush v. BASF Wyandotte Corp.*, 64 N.C. App. 41, 51, 306 S.E.2d 562, 568 (1983), a corporation is subject to the jurisdiction of the courts of this state when it has "purposefully injected [its] product into the stream of commerce without any indication that it desired to limit the area of distribution of its product so

> as to exclude North Carolina." Here, Safel gave Empire an exclusive right to sell the heaters in the United States with no limit as to North Carolina. Under *Bush v. BASF*, Safel injected its product into the stream of commerce and subjected itself to the jurisdiction of the courts of this state.

Id. at 228-29, 401 S.E.2d at 805.

In *Bush v. BASF Wyandotte Corp.*, 64 N.C. App. 42, 306 S.E.2d 562 (1983), plaintiff who was injured brought an action against two Swedish corporations that allegedly manufactured her washing machine. Both corporations were incorporated in Sweden and neither maintained any agents or employees in the United States. The only contact with the U.S. was the sale of some machinery, some 7 years before the suit was filed, to an independent distributor in Sweden. The contracts involved were all made in Europe and the company never shipped equipment into North Carolina, nor had it had any contacts with North Carolina, according to a company affidavit. *Id.* at 43, 306 S.E.2d at 564.

The trial court allowed the defendants' motions to dismiss, and the plaintiff appealed. The N.C. Court of Appeals overturned the trial court's decision, finding that there were sufficient contacts to comport with due process.

"In light of the act that defendant-appellees **purposefully injected their product into the stream of commerce without any indication that it desired to limit the area of distribution of its product so as to exclude North Carolina**, we hold that the courts of North Carolina may lawfully assert personal

jurisdiction over defendant-appellees." *Id.* at 50, 306 S.E.2d at 568 (emphasis added).

In reaching its conclusion that personal jurisdiction existed, the *Bush* court stated, "A foreign manufacturer cannot shield itself from liability for injuries caused by its defective product in the forum state with which it has no direct contacts simply by funneling its products through a domesticated, wholly owned, but completely separate and uncontrolled subsidiary, or though an exclusive agent or distributor." *Id.* at 50, 306 S.E.2d at 568.

In reaching its conclusion, the Bush court examined in detail the case of *Le Manufacture Francaise v. District Court,* 620 P.2d 1040 (1980).

In that case, Michelin of France, a tire manufacturer, was sued in Colorado when a tire manufactured by the company failed.

In *Le Manufacture Francaise*, as in this case, the foreign tire manufacturer had no manufacturing facilities outside of France, had no facilities of any kind in the United States, owned no property in the U.S., did not have an appointed agent for service of process, had no bank accounts or telephone listings in the U.S., and didn't advertise its products in the United States. Yet the court concluded that Colorado could assert jurisdiction over the French manufacturer without violating the due process clause. *Bush* at 48, 306 S.E.2d at 567.

The *Bush* court quoted:

> [I]t is seldom that a manufacturer deals directly with consumers in other states. The fact that the benefit he derives from [their] laws is an indirect one, however,

> does not make [those laws] any the less essential to the conduct of his business; and it is not unreasonable, where a cause of action arises from alleged defects in his products, to say that the use of such products in the ordinary course of commerce is sufficient contact with (such states) to justify a requirement that he defend (there). (Citations omitted.)
>
> The [Colorado] court found the minimum contacts requirement espoused by the Supreme Court in *World-Wide* to be met under the facts of *Le Manufacture Francaise*. "A manufacturer may be found to have engaged in the requisite purposeful activity even when title and control of its products pass outside of the forum state to middle-men who eventually resell the products to consumers within the state." *Id.* The court also noted the difficulties plaintiffs would confront if the Colorado courts were found to be without jurisdiction and plaintiffs were forced to pursue the litigation in France.

Bush at 48, 306 S.E.2d at 567.

In addition, the *Bush* court cited stream of commerce cases from around the country. Among the cases the court cited with approval:

• *McCombs v. Cerco Rentals*, 622 S.W.2d 822 (1981). The court said this case "supports an assertion of jurisdiction over [the Swedish companies] by our state's courts." In *McCombs*, a French crane

manufacturer shipped its products to a New York distributor. That distributor sold the crane to a North Carolina corporation, which in turn leased it to a Tennessee corporation. The French manufacturer complained that it could not anticipate being haled into court in Tennessee. The North Carolina court, in describing the case, said the Tennessee court "concluded that the defendant had '**indirectly availed itself of the laws of Tennessee by injecting its product into the stream of national commerce**,' and could therefore reasonably anticipate being haled into a Tennessee court to answer to a product liability claim." *Bush* at 49, 306 S.E.2d at 568, citing *McCombs*, 622 S.W.2d at 827. (emphasis added).

• *Svendsen v. Questor Corp.*, 304 N.W.2d 428 (Iowa 1981), the court held that a Missouri pool table manufacturer that placed its pool table into the stream of commerce by selling it to a Nebraska dealership could be sued in Iowa when plaintiff was injured. The North Carolina court quoted the opinion: "When a manufacturer voluntarily placed his product in the stream of commerce, the constitutional requirement of minimum contacts will be satisfied in all states where the manufacturer can foresee the product will be marketed." *Bush* at 49, 306 S.E.2d at 568, citing *Svendsen*, 304 N.W.2d at 431.

• *Gray v. American Radiator*, 22 Ill.2d 432, 176 N.E.2d 761 (1961). In this case, the court held that "a manufacturer engaged in interstate commerce which expects its products to be used in other states can reasonably expect to be held amenable to the jurisdiction of these other states' courts." *Bush* at 47, 306 S.E.2d at 566.

Similarly, in *Tart v. Prescott's Pharmacies, et. al*, 118 N.C.App. 516, 456 S.E.2d 121 (1995), a consumer sued the Florida manufacturer of a weight loss capsule. The manufacturer said it should not be subject to personal jurisdiction in North Carolina, since it sold to a distributor based in Florida.

In rejecting that argument, the court stated: "A foreign corporation cannot shield itself from liability for injuries caused by its defective product in the forum state with which it has no direct contacts simply by funneling its products through a completely separate and uncontrolled subsidiary or through an exclusive agent or distributor." *Id.* at 522, 456 S.E.2d at 126 (citations omitted).

In sum, the defendants manufactured and distributed tires that were designed to be sold in the United States. By doing so, they did not limit their market to exclude North Carolina as a state in which they would attempt to sell their product. Instead, they injected their tires into the stream of commerce in the United States and North Carolina, purposefully availing themselves of the protections of the forum state. It was reasonably foreseeable that they would be haled into court in North Carolina, should one of its citizens be injured by a defect in their tire.

It should be noted that each of these companies is a subsidiary of Goodyear, a U.S. company. Their websites and products are found through the U.S. Goodyear website, and each of the companies necessarily is connected to and has many contacts with its U.S. parent company. It will not be unduly burdensome for these companies to have to

defend themselves in the United States, home of their parent company.

3. Defendants' reliance on their affidavits is misplaced.

Defendants have submitted four affidavits they would have the Court rely on to dismiss these claims. Those affidavits contain a paragraph similar to this, found in the Goodyear Luxembourg affidavit: "To the best of my knowledge, Goodyear Luxembourg tires SA has not sold products in North Carolina." Aff. of Hermann Lang, ¶9. The affidavit misses the point. The point is not whether the foreign company directly sold products in North Carolina, but whether it sent tires to other Goodyear entities, which in turn warehoused and sold them in the U.S., including North Carolina.

The affidavits never say, "The tires our company designs, manufactures, or distributes are not sold in the United States or North Carolina." Instead, they fudge the issue with language such as:

"To the best of my knowledge, Goodyear Luxembourg Tires SA has not shipped its products, or any materials or things processed, serviced or manufactured by Goodyear Luxembourg Tires SA, directly to third parties in North Carolina." Aff. of Hermann Lang, ¶10.

The question is not whether the tires are shipped "directly to third parties in North Carolina," but whether the company placed the tires in the stream of commerce knowing they would be sold in the U.S. market. Since the tires are designed, labeled, and numbered to comply with U.S. Department of Transportation regulations, the inescapable

conclusion is that the tires were manufactured to be sold in the U.S. market, including North Carolina.

CONCLUSION

The defendants have provided no information that their tires are not sold in North Carolina. Plaintiffs have provided allegations in their complaint, and an affidavit showing the tires were manufactured to be sold in the United States and North Carolina.

All of the evidence, therefore, is that defendants have purposefully availed themselves of the forum state by placing them in the stream of commerce by attempting to market their goods here. That constitutes sufficient contacts to justify personal jurisdiction over the defendants.

This the 11th day of June, 2007.

KIRBY & HOLT, L.L.P.

/s/ David F. Kirby

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Memorandum of Law** was served on opposing counsel by hand delivering a copy to the following:

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This the 11th day of June, 2007.

/s/ William B. Bystrynski
William B. Bystrynski

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
	SUPERIOR COURT DIVISION
ONSLOW COUNTY	05-CVS-1922

EDGAR D. BROWN and PAMELA, BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, And KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS,

Plaintiffs,

vs.

ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA.

Defendants.

REPLY BRIEF OF DEFENDANTS GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S., AND GOODYEAR DUNLOP TIRES FRANCE SA IN SUPPORT OF MOTIONS TO DISMISS

STATEMENT OF THE CASE

The motions to dismiss for lack of personal jurisdiction of defendants Goodyear Dunlop Tires

Europe B.V. ("Goodyear Europe"), Goodyear Luxembourg Tires SA ("Goodyear Luxembourg"), Goodyear SA, Goodyear Lastikleri T.A.S. ("Goodyear Turkey"), and Goodyear Dunlop Tires France SA ("Goodyear Dunlop France") (sometimes hereinafter referred to as "the foreign Goodyear entities" or "defendants") were heard by the Honorable Gary E. Trawick on June 11, 2007 in Onslow County Superior Court. During the hearing, Plaintiffs submitted a Memorandum of Law, which they served on counsel for defendants at that time. At the close of the hearing, Judge Trawick held the matter open solely for the purpose of allowing counsel for defendants to reply to plaintiffs' memorandum which they had just received. Judge Trawick also stated that the plaintiffs would be allowed time to respond to new matters that may be raised by defendants in their reply brief. Defendants have raised no new matters, and counsel for defendants hereby submit the following reply brief on behalf of the foreign Goodyear entities in response to matters raised in plaintiffs' brief of June 11, 2007.

STATEMENT OF FACTS

Although many of the facts are not in dispute, defendants take issue with the facts as stated by plaintiffs in their brief to the extent that they imply that the alleged separation of "plies" on the tire in issue was the sole cause of the accident or that the tire was the cause of a criminal investigation in France. At most, plaintiffs' Complaint alleges that the tire contributed to the accident, but does not allege that it was the sole cause, as plaintiffs' brief seems to imply. Further, as stated by plaintiffs' counsel at the motions hearing, a criminal

investigation in France was initiated into the conduct of the bus driver and the bus company.

ARGUMENT

The "stream of commerce" theory is inapplicable in the instant action and does not establish personal jurisdiction over the foreign Goodyear entities.

There is absolutely no evidence before the Court that the foreign Goodyear entities have sufficient contacts with the State of North Carolina to enable North Carolina courts to exercise personal jurisdiction over them in keeping with constitutional due process requirements; rather, the competent evidence establishes that the foreign Goodyear entities have no contacts with North Carolina. However, plaintiffs seek to have the Court exercise personal jurisdiction over these defendants by simply alleging that some products manufactured by the foreign Goodyear entities may reach North Carolina. Such allegations fall far short of the showing required to support the exercise of personal jurisdiction over the foreign Goodyear entities.

1. Stream of commerce theory is inapplicable unless the injury resulted from the use of the product within the forum state.

Plaintiffs are unable to refute the affidavits of the foreign Goodyear entities which establish the lack of minimum contacts with North Carolina. Therefore, plaintiffs rely on cases such as World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S. Ct. 559 (1980), and its progeny, which state that

> . . .if the sale of a product of a manufacturer or distributor. . .is not simply an isolated

> occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has **there** been the source of injury to its owner or others.

World-Wide Volkswagen at 297, 100 S.Ct. at 567 (emphasis added) (quoted by plaintiffs at p. 7 of their memorandum); Cox v. Hozelock, Ltd., 105 N.C. App. 52, 411 S.E. 2d 640 (quoting World-Wide Volkswagen).

Plaintiffs' reliance on this quotation is misplaced, because the quoted language clearly shows that the stream of commerce argument must fail on the facts of this case. As alleged by the plaintiffs, the tire was manufactured in Turkey, sold in France, used in France, and involved in an accident in France, where the injuries occurred. Because the "allegedly defective merchandise" did not cause injury in North Carolina, the stream of commerce analysis is inapplicable.

The United States District Court for the Middle District of North Carolina has also affirmed this principle: "The stream of commerce theory for asserting personal jurisdiction is inapplicable in a case such as this where the cause of action did not arise from the manufacturer's products in the forum state." DP Environmental Services, Inc. v. Bertlesen, 834 F.Supp. 162, 166 (M.D.N.C. 1993).

In summary, since this case arises out of an accident in France and involves a product which the plaintiffs themselves identify as having been manufactured in Turkey, sold and used in France,

and involved in an accident which caused injuries in France, the stream of commerce theory does not provide a means for exercising jurisdiction in North Carolina over the foreign Goodyear entities. Plaintiffs' reliance on the stream of commerce theory in an effort to assert jurisdiction over the foreign Goodyear entities in North Carolina is misplaced.

2. There is no evidence before the court that the foreign Goodyear entities placed goods in stream of commerce with intent to sell them in North Carolina.

Even if the court were to apply a stream of commerce analysis, plaintiffs' argument must still fail, because they have not come forward with any showing that the foreign Goodyear entities placed goods in the stream of commerce with the intent to sell them in North Carolina. As a preliminary matter, the affidavit of Robert Ochs, a former Michelin employee, does not assert any first-hand knowledge with respect to the tire in issue or of Goodyear, other than the statement that he had seen the tire, and that the markings on it were in English. Further, Mr. Ochs did not refute any of the statements in Goodyear's affidavits. Therefore, even taking the statements of Mr. Ochs as true, the most that plaintiffs can show through the affidavit is that the tire in issue could be sold in the United States.

However, the Ochs affidavit contains no statements that would even tend to show that it was foreseeable that the tire in issue would be sold in the United States, much less that it was foreseeable that it would be sold in North Carolina. Significantly, plaintiffs have not alleged, or attempted to show through their affidavit, that the product involved in this matter was ever sold in North Carolina. However,

even if the plaintiffs could show that it was foreseeable that the tire would be sold in North Carolina, such a showing would clearly be insufficient, since "foreseeability alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause." World-Wide Volkswagen at 297, 100 S.Ct. at 567; Cox, 105 N.C. App. at 54, 411 S.E. 2d at 642 WWVW, Cox. As explained by the Supreme Court,

> ...the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.

Id. (citations omitted)

There is absolutely no evidence before the court that the foreign Goodyear entities placed their goods in the stream of commerce with the intent of selling them in North Carolina. The exercise of personal jurisdiction over the foreign Goodyear entities would be a patent violation of due process constraints.

3. Cases cited by the plaintiffs are consistent with and follow the principles of law set out above. serving to further underscore that the stream of commerce theory does not provide a means of exercising jurisdiction over the foreign Goodyear entities on the facts of this case.

Each of the cases cited by plaintiffs is consistent with the holdings discussed above; each one of them in which the court found jurisdiction

involved, at the very least, an injury occurring in the forum state arising out of the use of the product in the forum state. The cases on which plaintiffs mistakenly rely are:

- Tart v. Prescott's Pharmacies, Inc., 118 N.C. App. 516, 456 S.E.2d 121 (1995) (Product sold to a North Carolina pharmacy which sold it to a plaintiff in North Carolina, injury occurred in North Carolina)
- World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S. Ct. 559 (1980) (Personal jurisdiction not found, although accident and injury occurred in the forum state.)
- Cox v. Hozelock. Ltd., 105 N.C. App. 52, 411 S.E.2d 640 (1992) (Sprayer sold, purchased and used in North Carolina, causing injury in North Carolina)
- Warzynski v. Empire Comfort Systems. Inc., 102 N.C. App. 222, 401 S.E.2d 801 (1991) (Gas heater sold by manufacturer to distributor with exclusive right to sell product in the United States; Distributor sold to gas company in North Carolina, which in turn sold heater to North Carolina resident and installed the heater in North Carolina home, causing damage in North Carolina.)
- Bush v. BASF Wyandotte Corp., 64 N.C. App. 42, 306 S.E.2d 562 (1983) (Manufacturer sold washing machine to distributor, which sold the product in North Carolina; use of the product in North Carolina caused injury to North Carolina resident.)

- Le Manufacture Francaise v. District Court, 620 P.2d 1040 (1980) (Foreign tire on car sold in Colorado, accident and injury occurred in Colorado.)
- McCombs v. Cerco Rentals, 622 S.W.2d 822 (1981) (Crane used in Tennessee, accident and injury occurred in Tennessee.)
- Svendsen v. Ouestor Corp., 304 N.W.2d 428 (Iowa 1981) (Pool table sold by Omaha distributor to Iowa purchaser, use of product and injury occurred in Iowa.)
- Grav v. American Radiator, 22 Ill. 2d 432, 176 N.E.2d 761 (1961) (Water heater sold to consumer in Illinois, product used and injury occurred in Illinois.)

In summary, in this case arising out of an accident in France and involving a product which the plaintiffs themselves assert was manufactured in Turkey, sold and used in France, and involved in an accident which caused injuries in France, the stream of commerce theory does not provide a means for exercising jurisdiction in North Carolina over the foreign Goodyear entities. Plaintiffs' reliance on the stream of commerce theory in an effort to assert jurisdiction over the foreign Goodyear entities in North Carolina is misplaced, and the action against the foreign Goodyear entities must be dismissed.

CONCLUSION

For the reasons stated above, and the reasons set out by defendants in their prior brief and argued at the hearing in this matter, defendants Goodyear Dunlop Tires Europe B.V., Goodyear Luxembourg Tires SA, Goodyear SA, Goodyear Lastikleri T.A.S.,

and Goodyear Dunlop Tires France SA, respectfully request that the Court dismiss Plaintiffs' claims against them, with prejudice, on the grounds that the court lacks personal jurisdiction over these defendants.

This the 20 day of June, 2007.

/s/ William K. Davis
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State Bar No. 1117

/s/ Charlot F. Wood
CHARLOT F. WOOD
State Bar No. 16899

/s/ Kevin G. Williams
KEVIN G. WILLIAMS
State Bar No. 25760
Attorney for Defendants
The Goodyear Tire &
Rubber Company,
Goodyear Dunlop Tires
Europe B.V., Goodyear
Luxembourg Tires SA,
Goodyear SA, Goodyear
Lastikleri T.A.S. and
Goodyear Dunlop Tires
France SA

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing in the above captioned matter upon all other parties to this cause by:

hand delivering a copy hereof, properly addressed to the parties listed hereinbelow:

or by

X depositing a copy hereof in a first class postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, properly addressed to the parties listed hereinbelow.

or by

X facsimile. (to William B. Bystrynski, Esq)

This the 20 day of June, 2007.

/s/ Charlot F. Wood
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NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
ONSLOW COUNTY	SUPERIOR COURT DIVISION 05 CVS 1922

EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS,

Plaintiffs,

v.

ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and

PLAINTIFFS' REPLY TO GOODYEAR DEFENDANTS' MEMORANDUM OF LAW REGARDING MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION

GOODYEAR DUNLOP
TIRES FRANCE SA.

Defendants.

INTRODUCTION

Plaintiffs, in response to the foreign Goodyear defendants' reply brief in support of their motions to dismiss for lack or personal jurisdiction, show the Court as follows:

1. Defendants' argument that the stream of commerce theory of asserting personal jurisdiction does not apply if the injury occurred in a separate state is incorrect because it misinterprets the sole case defendants cited to support that proposition.

2. Defendants' argument that there is "no evidence that the foreign Goodyear entities placed goods in a stream of commerce with intent to sell them in North Carolina" ignores plaintiffs' affidavit and the uncontradicted pleadings in plaintiffs' complaint.

3. If the Court has any concerns about whether plaintiff has shown that the defendants have minimum contacts, plaintiffs have noticed a 30(b)(6) deposition of Goodyear Tire and Rubber for June 27 regarding sales of goods in North Carolina that are manufactured by the foreign Goodyear defendants, and plaintiffs ask the court, in its discretion, to defer ruling until that deposition is complete.

ARGUMENT

In their Memorandum of Law, the foreign Goodyear defendants essentially make two arguments. The first argument is that the stream of

commerce theory does not apply in certain cases of personal jurisdiction.

a. The stream of commerce theory applies to all products liability cases involving companies that put products into the stream of commerce.

The only case cited by the defendants for the proposition that the stream of commerce analysis does not apply if the tort occurs out of state is *DP Environmental Services, v. Bertlesen*, 834 F.Supp. 162 (1993). That case did not involve personal injuries, or really, any injury to the North Carolina plaintiff at all, but instead was a patent infringement case.

In *Environmental Services*, a North Carolina corporation sought a preemptive strike against the exclusive licensee of patents and its only customer, both of which were Michigan corporations, seeking a declaratory judgment that the North Carolina corporation was not infringing a patent. The court held that the Michigan corporation lacked minimum contacts, noting particularly that the defendant "sells its products exclusively in Michigan." *Id.* at 166. Further there was no evidence that the defendant had a business relationship with anyone in North Carolina. *Id.*

The court then distinguished the plaintiff's argument from another case:

> Plaintiff also argues that the manufacturer-distributor relationship between Universal and Main Frame in and of itself can submit Universal to the personal jurisdiction of this court based on Main Frame's minimum contacts. Plaintiff relies on *Hardy v. Pioneer Parachute Co.*,

> 531 F.2d 193 (4th Cir. 1976). Unlike the defendant in *Hardy*, however, Universal is not a non-resident shipper of goods being sued in a **products liability action**. The stream of commerce theory for asserting personal jurisdiction is inapplicable in a case such as this where the cause of action did not arise from the manufacturer's products in the forum state. *See Verosol B.V. v. Hunter Douglas, Inc.*, 806 F.Supp. 582, 589-90 n.3 (ED.Va.1992).

Id. at 166 (emphasis added).

In its brief, the defendant has seized on this language, "The stream of commerce theory for asserting personal jurisdiction is inapplicable in a case such as this where the cause of action did not arise from the manufacturer's products in the foreign state." (emphasis added). A case "such as this" is a case in which the defendant did not actually make anything to ship, but merely held a patent. The court's previous sentence provides the context, and makes it clear that what distinguishes *Hardy*, in which minimum contacts were found, was the fact that in *Hardy* – as in this case – the defendant is a non-resident shipper of goods involved in a product liability case. In contrast, in *DP Environmental Services*, the defendant was an out of state company that did no manufacturing and no selling outside of North Carolina. Instead, it merely licensed a patent and there was no evidence or allegation that it sold goods inside North Carolina.

In contrast, in *Hardy*, the case distinguished by the *DP Environmental Services* court, a Delaware manufacturer and a New York distributor were sued

for injuries plaintiff sustained while using an allegedly defective parachute. The court found that there were enough minimum contacts, even by the manufacturer, which did not directly sell the parachute to the plaintiff, and whose only contact was an occasional direct sale in the state. The court noted: "Modern transportation, communication, and the national flow of commerce have contributed to the recognition that states have a legitimate interest in providing means for their citizens to seek redress against foreign corporations that ship allegedly defective products into the state." *Hardy v. Pioneer Parachute Co., Inc.*, 531 F.2d 193, 195 (1976).

> selling tires for automobiles, trucks and buses that are marketed, sold and used throughout the world, including Europe, the United States and North Carolina.

Plaintiffs' complaint, ¶17.

Further, plaintiffs' affidavit from an expert with 25 years in the tire industry, and who particularly has experience in the tire industry in Europe, states: "Based on my knowledge of tire manufacturing and the European tire market, this tire was designed, manufactured and marketed for sale worldwide, including sale in the United States and North Carolina."

Plaintiffs' allegations are taken as true, and in this case, defendants have not rebutted that allegation with their affidavits. Instead, they use statements that skirt the issue, which is whether they manufacture and distribute products that are put in the stream of commerce and are eventually sold in North Carolina. Defendants state in their affidavits: "To the best of my knowledge, Goodyear

Luxembourg Tires SA has not shipped its products, or any materials or things processed, serviced or manufactured by Goodyear Luxembourg Tires SA, directly to third parties in North Carolina." (Aff. of Hermann Lang, ¶10.) This is not enough to rebut plaintiffs' allegation that they manufactured, distributed and sold tires in North Carolina.

As the U.S. Supreme Court stated:

> If the sale of a product of a **manufacturer or distributor** such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly **or indirectly**, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

World-Wide Volkswagen at 297-98, 100 S.Ct. at 567 (emphasis added).

The test is whether "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Id.* at 297, 100 S.Ct. at 567. In this case,

defendants put tires into the stream of commerce in an effort to take advantage of the U.S. market, including North Carolina. If they are haled into court here because of one of their defective tires – even if that tire was purchased overseas – it does not offend due process. They are being brought into court in North Carolina for exactly the conduct – selling a defective tire – they might reasonably anticipate being sued here.

As the North Carolina Court of Appeals held in *Cox v. Hozelock, Ltd.*, 105 N.C. App. 52,411 S.E.2d 640 (1992), in finding personal jurisdiction over an English manufacturer when a North Carolina resident was injured by its product:

> In conformity with the trend of North Carolina case law, we uphold the stream of commerce doctrine and find it consistent with the federal Due Process Clause. We hold the sole act of a manufacturer's intentional injection of his product into the stream of commerce provides sufficient grounds for a forum state's exercise of personal jurisdiction over the foreign manufacturer defendant. Pursuant to the facts in this case, the North Carolina court may properly invoke personal jurisdiction over defendant.

Id at 57-58, 411 S.E.2d at 644 (emphasis added).

c. To the extent that any doubt remains about the adequacy of plaintiffs' proof regarding minimum contacts, plaintiffs ask the court to defer ruling until after its 30(b)(6) deposition of Goodyear is completed.

It is often remarked that a trial is a search for the truth. To that end, plaintiffs have filed a 30(b)(6) motion of The Goodyear Tire and Rubber Co. That motion (attached as exhibit 1), seeks to clear up any questions the court has regarding the foreign Goodyear defendants and their efforts to inject tires into the stream of commerce in North Carolina.

The notice of deposition asks for Goodyear to designate a representative to testify "whether any tires or tire products designed, manufactured, labeled, shipped or distributed by [each foreign Goodyear defendant] were eventually shipped into and/or sold in the U.S. or North Carolina."

That deposition was properly noticed for June 27, 2007, to take place at Goodyear's headquarters in Akron, Ohio. On June 20, defendants faxed plaintiffs a motion for a protective order (attached as exhibit 2) saying "such deposition testimony could not provide any information which would be relevant to defendants' motions to dismiss."

Plaintiffs believe that they have gathered and asserted sufficient evidence for the court to decide that they have met the test for minimum contacts. To the extent that the Court has any concerns, however, or hopes to short-circuit this process so the question does not arise again, plaintiffs ask to be able to take the deposition, in Akron, of persons from Goodyear who will know the extent to which each of the foreign defendants manufactures and markets products for sale in North Carolina.

If someone with knowledge from Goodyear can testify that the foreign defendants do not inject goods that reach North Carolina into the stream of commerce, or take other actions to avail themselves

of the North Carolina market, then plaintiffs lack minimum contacts and the case should be dismissed for lack of personal jurisdiction as to those defendants.

On the other hand, if deposition testimony supports plaintiffs' affidavit and the allegations of the complaint, then plaintiffs should be able to continue their suit against these foreign defendants for the deaths of their sons.

If the court has any concerns about the evidence presented – on either side – plaintiffs ask that they be permitted to take the 30(b)(6) deposition of Goodyear, if not on June 27, then on a mutually convenient day to be worked out by the parties, and that the court, in its discretion, withhold ruling on this issue until that deposition is complete.

CONCLUSION

All of the plaintiffs' evidence is that the defendants inject their products into the stream of commerce to be sold in North Carolina. Plaintiffs' affidavit shows the tire was written in English, with DOT markings and U.S. warnings so that the tire could be sold in the United States. Further, plaintiffs have alleged in their complaint, which is taken as true, that the defendants "are in the business of designing, testing, manufacturing and selling tires. . . that are marketed, sold and used [in] North Carolina."

Goodyear's subsidiaries will not be harmed by having to come into court in North Carolina to answer for a defective product they placed in the stream of commerce, since they place other tires in that stream that reach North Carolina. But the families of the two boys were killed would find it an

enormous expense and inconvenience to try to litigate this case in France.

To the extent that the Court wishes other information regarding these issues, plaintiffs ask that the Court allow them to take the 30(b)(6) deposition of The Goodyear Tire and Rubber Co. to gather further evidence of the extent of defendants' contacts with North Carolina.

This the 22nd day of June, 2007.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Reply to Goodyear Defendants' Memorandum of Law** was served on opposing counsel by depositing a copy in the U. S. mail addressed to the following:

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/s/ William B. Bystrynski
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NORTH CAROLINA		IN THE GENERAL COURT OF JUSTICE
ONSLOW COUNTY		SUPERIOR COURT DIVISION
EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS,	)	05 CVS 1922
Plaintiffs,	)	**PLAINTIFFS' MEMORANDUM OF LAW ON REHEARING OF GOODYEAR DEFENDANTS' MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION**
v.	)	
ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA.,	)	
Defendants.	)	

INTRODUCTION

The parties were initially before the court on the foreign Goodyear defendants' motions to dismiss for lack of personal jurisdiction, in which the Goodyear defendants alleged they lacked minimum contacts with North Carolina. This motion is now on for rehearing following discovery regarding the minimum contacts those foreign companies have with North Carolina. That discovery showed that two of the five foreign Goodyear companies lack the necessary minimum contacts, and plaintiffs have filed voluntary dismissals as to those companies. (See Exhibit E, Voluntary Dismissal). As to the remaining three companies, despite Goodyear's previous affidavits stating the companies did not do business in North Carolina, Goodyear now admits that the companies shipped 44,000 tires for sale into North Carolina in the past three years, far more than enough to demonstrate minimum contacts.

I. BACKGROUND

To refresh the Court's recollection, this is a wrongful death case involving two 13-year-old boys, Matthew Helms of Jacksonville and Julian Brown of Charlotte, youth soccer players who were killed in a bus wreck near Paris, France. On April 18, 2004, as they were on a bus headed to the airport in Paris to return home, one of the bus' Goodyear tires failed when its plies separated. The bus driver lost control of the bus and it overturned, killing both boys.

French investigators involved in a criminal negligent homicide investigation that arose after this accident concluded that one of the bus tires was defective, and that defect helped cause the wreck. Plaintiffs filed suit in Onslow County against several defendants, including Goodyear Tire and Rubber Co.

and its subsidiary corporations that plaintiffs believed designed, manufactured and distributed the tire for sale in France, and in the United States. Plaintiffs alleged that the tire was defectively manufactured and designed, and that it breached express and implied warranties.

Goodyear Luxembourg Tires SA. The affidavit on behalf of this company stated that it "has not sold products in North Carolina" (Lange aff. ¶9); and "has not shipped its products or any materials or things processed serviced or manufactured by Goodyear Luxembourg Tires SA, directly to third parties in North Carolina." (Id. ¶10). Discovery now shows that 6402 of its tires were sent to North Carolina for sale.

Goodyear Dunlop Tires France SA. This company stated in its affidavit that it "has no contacts whatsoever with the State of North Carolina," (Rousseau aff. ¶4); "does not currently conduct any business in North Carolina, nor has it ever conducted any business in North Carolina," (Id. ¶5). Goodyear has now admitted it shipped 33,923 tires made by Goodyear Dunlop Tires France SA into North Carolina for sale.

Evidence about the actual number of tires shipped into North Carolina for sale came only after:

a. Goodyear produced affidavits that were - speaking charitably artfully drafted from executives with the three defendant companies.
b. Plaintiffs noticed a 30(b)(6) deposition of Goodyear to clarify whether these companies actually conducted business in North Carolina.

c. Goodyear filed a motion for a protective order, attempting to block the 30(b)(6) deposition.

d. The Honorable Edwin G. Wilson Jr. heard arguments and denied defendants' motions for a protective order, requiring the defendant to make available a 30(b)(6) witness to answer the plaintiffs' questions regarding the quantity of goods the foreign corporations sold in North Carolina.

e. After plaintiffs flew to Akron, Ohio, for the deposition, defendants produced a 30(b)(6) witness who had absolutely no information about four of the five companies at issue, and only a portion of the information needed about the fifth, in contravention of Judge Wilson's order. (Exhibit C, Notice of 30(b)(6) deposition and Exhibit D, Order of Edwin G. Wilson Jr.) For example, there was this exchange during the deposition:

Q. Now let me go to the next companies called Goodyear Dunlop Tires Europe B.V.; are you familiar with that particular Goodyear entity?

A. No.

Q. Okay. Do you know anything about whether they ship tires into the United States or have shipped tires into the United States in the past three years, did you make any inquiry-

A. No.

Q. -- about that?

A. No.

> Q. So I take it you're not able to answer any questions about whether that particular Goodyear company has shipped tires into the Untied States or into North Carolina for sale in the past three years, you're not able to answer those questions?
> A. No.

Deposition of Donn Kramer, p. 48-49.

> The witness similarly lacked information - which was required specifically by the notice of deposition and Judge Wilson's order - for four of the five companies.
>
> f. Only after plaintiffs complained about the witness' lack of information, and noticed another 30(b)(6) deposition of Goodyear, did Goodyear finally produce an affidavit admitting that in all, these three foreign companies that it said conducted no business in North Carolina, had manufactured more than 46,000 tires sent into North Carolina for sale within the past three years.

Goodyear, therefore, was less than candid in its affidavits to the court, failed to initially provide discovery required by Judge Wilson's order, and only reluctantly admitted that it has sent more than 46,000 tires for sale into North Carolina from the foreign defendants that it says lack any contacts with our state.

III. Application of the law to the new evidence.

a. The North Carolina long arm statute specifically authorizes jurisdiction in these circumstances.

N.C.G.S. § 1-75.4, the North Carolina long arm statute, specifically authorizes jurisdiction over the defendant companies. It states that a court of North Carolina has jurisdiction over a defendant "whether the claim arises within or without this state," when a person "is engaged in substantial activity within this State, whether such activity is wholly interstate, intrastate or otherwise." N.C. Gen. Stat. § 1-75.4 (1)(d).

This statute is to be "liberally construed by our courts to find personal jurisdiction over nonresident defendants to the full extent allowed by the due process standards of the Fourteenth Amendment." *Fraser v. Littlejohn*, 96 N.C. App. 377, 382, 386 S.E.2d 230, 234 (1989). All three of these defendant companies reach the substantial activity threshold, as they send thousands of tires a year into the state, on a continuous and systematic basis, in an attempt to profit from sales to North Carolina consumers. Plaintiffs, therefore, have complied with the long arm statute in exercising jurisdiction over the defendants.

b. It is no objection that defendants supply tires through distributors and not directly to North Carolina consumers.

1. Goodyear's factual testimony about its distribution scheme shows that its companies are part of a worldwide delivery plan that includes North Carolina.

Defendants may complain that they do not directly ship to North Carolina consumers, and so the court should not exercise jurisdiction over them. That claim is contrary to a number of North Carolina cases that have held that defendants gain no

protection by funneling their sales through another distributor.

First, it is important to look at Goodyear's distribution chain. Donn Kramer, Goodyear's 30(b)(6) witness, testified in his deposition about the Turkish manufacturer of the tire at issue, Goodyear Lastikleri T.A.S., and the Goodyear distribution chain. While he knew information only about the Turkish company at that time, in his affidavit provided to plaintiffs last week, he said the sourcing and distribution of the tires for all three companies is generally the same. (Aff. Kramer, ¶6, 8, 10).

Goodyear Lastikleri T.A.S. is a wholly owned subsidiary of the U.S. Goodyear company, the largest tire company in the world. Kramer testified that Goodyear Lastikleri manufactures tires at the behest of other Goodyear entities that determine how many tires are needed. Goodyear does an ongoing market analysis for its tires, determining where there is a market for particular types of tires. Once Goodyear sees a need in the United States - say specifically in North Carolina - for a particular type of tire, it determines which of its world-wide manufacturing plants makes that tire. It then "sources" the tire, telling the appropriate manufacturing plant, such as Goodyear Lastikleri in Turkey, to make and ship the tires. "Their job is to be given a forecast or a ticket and then they just build widgets," Kramer said of the Goodyear Lastikleri plant. (Kramer dep. p. 36). The tires are sent to the United States "through our own internal distribution," Kramer testified. (Kramer dep. p. 35). Some of the tires are shipped to the U.S. directly from the foreign manufacturing plant, or they could be shipped first to a warehouse, then

forwarded to the U.S., he said. (Kramer dep. p. 38). They are then sold to customers in North Carolina and other states, either at Goodyear brand service centers, or at stores that stock tires from a variety of manufacturers.

These foreign manufacturers are not isolated mom and pop businesses in far off countries that happen to sell a product to a local distributor who, without their knowledge, resells the product in the United States. Instead, the entire import of Mr. Kramer's testimony was that these wholly-owned subsidiary/manufacturers are part of a highly integrated world-wide business that is based in the United States and which is designed to take advantage of every opening in the marketplace, selling tires throughout the world, including North Carolina.

2. The U.S. Supreme Court and North Carolina courts repeatedly have held that companies that place merchandisein the stream of commerce for a market are subject to suit in that forum state.

The question in a minimum contacts case is whether there are sufficient contacts between the defendant and the forum state that it does not offend due process for the defendant to be subject to suit in the forum state.

As the U.S. Supreme Court has stated: The test is whether "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen* at 297, 100 S.Ct. at 567.

The U.S. Supreme Court held in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559 (1980), that a manufacturer or distributor who places an item in the stream of commerce, even indirectly, attempting to serve a market, it is subject to suit in that market.

> If the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is **not simply an isolated occurrence**, but arises from the efforts of the manufacturer or distributor to serve **directly or indirectly**, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

World-Wide Volkswagen at 297-98, 100 S.Ct. at 567 (emphasis added).

In addition, North Carolina courts have found that foreign corporations that place their goods into the stream of commerce, attempting to reach the U.S. and not restricting which state in which they are sold, are subject to jurisdiction here, even if there are only a few items sold in the state.

In *Bush v. BASF Wyandotte Corp.*, 64 N.C. App. 42, 306 S.E.2d 562 (1983), plaintiff who was injured brought an action against two Swedish corporations that allegedly manufactured a commercial washing machine that injured her. Both corporations were incorporated in Sweden and neither maintained any agents or employees in the United States. The contracts involved were all made in Europe and the company never shipped equipment into North Carolina, nor had it had any contacts with North Carolina, according to a company affidavit. *Id.* at 43,306 S.E.2d at 564.

The trial court allowed the defendants' motions to dismiss, and the plaintiff appealed. The N.C. Court of Appeals overturned the trial court's decision, finding that there were enough contacts to comport with due process.

"In light of the act that defendant-appellees purposefully injected their product into the stream of commerce without any indication that it desired to limit the area of distribution of its product so as to exclude North Carolina, we hold that the courts of North Carolina may lawfully assert personal jurisdiction over defendant-appellees." *Id.* at 50, 306 S.E.2d at 568.

In reaching its conclusion that personal jurisdiction existed, the *Bush* court stated, "A foreign manufacturer cannot shield itself from liability for injuries caused by its defective product in the forum state with which it has no direct contacts simply by funneling its products through a domesticated, wholly owned, but completely separate and uncontrolled subsidiary, or though an exclusive agent or distributor." *Id.* at 50,306 S.E.2d at 568.

In reaching its conclusion, the Bush court examined in detail the case of *Le Manufacture Francaise v. District Court*, 620 P.2d 1040 (1980).

In that case, Michelin of France, a tire manufacturer, was sued in Colorado when a tire manufactured by the company failed. The tire had been purchased from the company in France, and was actually sold to the public in Germany.

In *Le Manufacture Francaise*, as in this case, the foreign tire manufacturer had no manufacturing facilities outside of France, had no facilities of any kind in the United States, owned no property in the U.S., did not have an appointed agent for service of process, had no bank accounts or telephone listings in the U.S., and didn't advertise its products in the United States. Yet the court concluded that Colorado could assert jurisdiction over the French manufacturer without violating the due process clause. *Bush* at 48, 306 S.E.2d at 567.

The *Bush* court quoted:

> "[I]t is seldom that a manufacturer deals directly with consumers in other states. The fact that the benefit he derives from [their] laws is an indirect one, however, does not make [those laws] any the less essential to the conduct of his business; and it is not unreasonable, where a cause of action arises from alleged defects in his products, to say that the use of such products in the ordinary course of commerce is sufficient contact with (such states) to justify a requirement that he defend (there)." (Citations omitted.)

> The [Colorado] court found the minimum contacts requirement espoused by the Supreme Court in *World-Wide* to be met under the facts of *Le Manufacture Francaise*. "A manufacturer may be found to have engaged in the requisite purposeful activity even when title and control of its products pass outside of the forum state to middle-men who eventually resell the products to consumers within the state." *Id.* The court also noted the difficulties plaintiffs would confront if the Colorado courts were found to be without jurisdiction and plaintiffs were forced to pursue the litigation in France.

Bush at 48,306 S.E.2d at 567.

In this case, in which the manufacturer and distributors are part of a worldwide integrated distribution scheme, designed to sell tires in North Carolina and throughout the world, and which regularly sold thousands of tires in this state, the plaintiffs have demonstrated that defendants "purposefully injected their products into the stream of commerce," justifying the assertion of personal jurisdiction.

IV. Plaintiffs have met their burden to show continuous and systematic contacts.

North Carolina courts have ruled that personal jurisdiction may be exercised over a defendant, even when a lawsuit arises that is not related to defendant's contacts with the forum state. In this case, plaintiffs believe that because the defendants have injected their products into the stream of

commerce, it is not unreasonable to find sufficient contacts when the products they are trying to sell tires - injure a North Carolina resident, even when that resident is injured by a tire purchased or used outside of the state.

Goodyear may argue that while 5906 Goodyear Lastikleri tires have been sent to North Carolina for sale in the past three years, because this specific Goodyear Regional tire was not sold in North Carolina - it was an uncommon size used only in Europe - there should be no jurisdiction over Goodyear Lastikleri. But North Carolina courts have held that even if the contacts of a foreign company with North Carolina are completely unrelated to the injury, defendants can still have sufficient contacts to invoke personal jurisdiction. This is the doctrine of "general jurisdiction."

Under that doctrine, "jurisdiction may be asserted even if the cause of action is unrelated to defendant's activities in the forum as long as there are sufficient continuous and systematic contacts between defendant and the forum state." *Stann v. Levine*, 180 N.C. App. 1,636 S.E.2d 214 (2006).

In *Fraser v. Littlejohn*, 96 N.C. App. 377, 386 S.E.2d 230 (1989), our courts explained the requirements for finding general jurisdiction. First, there must be a statute that would allow the court to obtain jurisdiction over the defendant. Plaintiffs have discussed the long arm statute, and its requirement of "substantial activity," *supra*. Second, the Fraser court said, "the Court must determine whether the exercise of jurisdiction is consistent with due process." *Id.* at 381, 386 S.E.2d at 233.

To do that, the court must determine whether there are minimum contacts between the defendant and the forum state, such that an exercise or jurisdiction does not offend the Due Process clause. Our appellate courts have given guidance in making that determination: "The essential ingredient in determining whether minimum contacts exist is that there must be some act by which defendant purposefully avails himself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws." *Fraser v. Littlejohn*, 96 N.C. App. 377, 387, 386 S.E.2d 230, 236 (1989)

The court went on to say, "Minimum contacts are not determined by applying a mechanical formula; rather, each case is judged on its particular facts considering the traditional notions of fair play and justice. *Ciba-Geigy Corp. v. Barnett*, 76 N.C. App. 605, 334 S.E.2d 91 (1985). The factors to be considered are: (1) the quantity of the contacts, (2) the nature and quality of the contacts, (3) the source and connection of the cause of action to the contacts, (4) the interest of the forum state, and (5) convenience." *Id.* at 383, 386 S.E.2d at 234 (*emphasis added*).

Plaintiffs believe that all five of these factors weigh in the favor of the plaintiffs, and that "traditional notions of fair play and justice" compel a finding that this court should exercise jurisdiction. Taking these factors in turn:

a. **Quantity of the contacts.** The three foreign Goodyear defendants have admitted that some 46,000 tires they have manufactured or designed have been sent to this state for sale.

(Goodyear Laskilieri, 5906 tires; Goodyear Luxembourg Tires SA, 6402 tires; Goodyear Dunlop Tires France SA, 33,923 tires). Those tires "come in on a regular basis," according to Goodyear's 30(b)(6) designee. (Dep. Kramer, p. 21).

North Carolina courts have repeatedly found jurisdiction when there is only a fraction of the sales in this case:

As the North Carolina Court of Appeals held in *Cox v. Hozelock, Ltd.*, 105 N.C. App. 52, 411 S.E.2d 640 (1992), in finding personal jurisdiction over an English manufacturer when a North Carolina resident was injured by its product:

> In conformity with the trend of North Carolina case law, we uphold the stream of commerce doctrine and find it consistent with the federal Due Process Clause. We hold the sole act of a manufacturer's intentional injection of his product into the stream of commerce provides sufficient grounds for a forum state's exercise of personal jurisdiction over the foreign manufacturer defendant. Pursuant to the facts in this case, the North Carolina court may properly invoke personal jurisdiction over defendant.

Id. at 57-58, 411 S.E.2d at 644 (emphasis added).

b. The nature and quality of the contacts. In this case, the contacts are not fleeting, such as mere phone calls into the state, or advertisements in national publications that happen to reach North Carolina. Instead, defendants are attempting to sell as many tires as possible in North Carolina.

Defendant purposefully and intentionally sources tires from its related and subsidiary foreign manufacturers, importing them into the United States and selling them in the North Carolina market. Goodyear sells tires from these defendants in North Carolina on a continuing basis and is doing so today. In selling its tires here, a defendant "avails himself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws." That, in and of itself, is enough for the court to find jurisdiction.

Defendants' contacts with the state are both continuous and systematic. They do business here by repeatedly selling thousands of tires within our state. Those sales are admitted to have taken place on a regular basis over the past three years.

c. **The source and connection of the cause of action to the contacts.** In this case, the contacts are tightly tied to the cause of action. Tires that the defendants manufactured were shipped to North Carolina and sold to its residents. It would be foreseeable, therefore, that one of its tires might fail, injuring a North Carolina resident, and the defendants might have to defend a lawsuit here. If they are haled into court here because of one of their defective tires failed - even if that tire was purchased overseas - it does not offend due process. They are being brought into court in North Carolina for exactly the conduct - selling a defective tire - for which they might reasonably anticipate being sued here. Therefore, there is a substantial connection between the cause of action and the contacts.

d. **Interest of the forum state.** In this case, two 13-year-old North Carolina residents were killed

when a tire - found to be defective by a French criminal investigation - failed, causing the bus they were riding in to crash. North Carolina has an interest in protecting its citizens - especially its minor citizens who cannot protect themselves - and allowing them a forum for the redress of grievances. As the N.C. Supreme Court has stated: "It is generally conceded that a state has a 'manifest interest' in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors." *Tom Togs, Inc. v. Ben Elias Industries Corp.*, 318 N.C. 361, 367, 348 S.E.2d 782, 787 (1986).

e. Convenience. It is admitted by the plaintiffs that it would be more convenient to the foreign defendants to try the case in Europe. But in balancing the equities, any minimal inconvenience to the defendants is outweighed by the excessive burden of requiring these parents to litigate their case in Europe.

These defendants are part of a multi-national, multi-billion dollar corporation that is based in the United States and directed by a board of directors located in the United States. They necessarily have repeated contacts with the U.S., which directs the companies on a world-wide basis. More importantly, the specific foreign Goodyear corporations have ongoing and continuous commercial contacts with the forum state. If it is convenient for them to market and sell their goods in North Carolina, surely it should not be unduly burdensome to appear in our courts. The defendants had no trouble securing lawyers in the U.S. to defend their interests - in fact, the same lawyers and law firm represent Goodyear Tire & Rubber Co. and the foreign companies. So any

inconvenience to defendants so used to working with the United States is minor.

By contrast, the expense and inconvenience to these families of attempting to litigate wrongful death claims for their sons in a foreign legal system, thousands of miles away, with obvious language barriers, would be overwhelming and prohibitive. It would much more inconvenient for the boys' parents to litigate in Europe than for these multi-national companies to litigate in North Carolina.

In sum, all of the five factors our courts have said should be weighed in claims of general jurisdiction favor the plaintiffs.

CONCLUSION

This court can properly exercise personal jurisdiction over the foreign Goodyear defendants. The defendants purposefully availed themselves of the protections of the laws of North Carolina, and the benefits of commerce in our state, by manufacturing products that were to be sold in North Carolina through their parent corporation. Defendants have substantial ties to North Carolina, in all sending more than 46,000 tires into the state for sale in the past three years. Those ties are continuous, ongoing and systematic, in that the companies' products are regularly sourced from the related Goodyear manufacturing plants and sent into our state for sale. Our courts have determined that manufacturers who inject their products into the stream of commerce cannot hide behind the excuse that it was their distributor who had contact with the forum state, not they themselves. That is particularly true here, when the manufacturers and distributors are part of a chain of Goodyear companies designed to take

advantage of the worldwide tire market, including the market in North Carolina.

The equities also fall in the plaintiffs' favor. Goodyear's subsidiaries will not be harmed by having to come into court in North Carolina to answer for a defective product they placed in the stream of commerce, since they place other tires in that stream that reach North Carolina. But the families of the two boys who were killed would find it an enormous expense and inconvenience to try to litigate this case in France.

Plaintiffs respectfully request that the Court deny defendants' motions to dismiss for lack of personal jurisdiction.

This the 5th day of December, 2007.

This is the 5th day of December, 2007.

KIRBY & HOLT, L.L.P.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Memorandum of Law** was served upon the opposing counsel by facsimile transmission and by depositing a copy in the U.S. mail addressed to the following:

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This the 5th day of December, 2007.

/s/
William B. Bystrynski

EXHIBITS

Exhibit A	Affidavit of Donn Kramer (November 28,2007)
Exhibit B	Deposition of Donn Kramer (September 28, 2007)
Exhibit C	Notice of 30(b)(6) Deposition
Exhibit D	Order denying defendants' motion for protective order
Exhibit E	Voluntary Dismissal of Defendant Goodyear Dunlop Tires Europe B.V. and Defendant Goodyear SA, Without Prejudice
Exhibit F	Affidavit from Goodyear Luxembourg Tires SA
Exhibit G	Affidavit from Goodyear Lastikleri T.A.S.
Exhibit H	Affidavit from Goodyear Dunlop Tires France S.A.

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
	SUPERIOR COURT DIVISION
ONSLOW COUNTY	05-CVS-1922

EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS,

Plaintiffs,

vs.

ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B.V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA.

Defendants.

BRIEF OF DEFENDANTS GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR LASTIKLERI T.A.S., AND GOODYEAR DUNLOP TIRES FRANCE SA ON REHEARING OF MOTIONS TO DISMISS

STATEMENT OF THE CASE

This matter is before the court on Plaintiffs' motion for rehearing of the foreign Goodyear

defendants' motions to dismiss for lack of personal jurisdiction. Plaintiffs have now dismissed two of the foreign Goodyear defendants, so the motions remaining for determination are those of defendants Goodyear Luxembourg Tires SA ("Goodyear Luxembourg"), Goodyear Lastikleri T.A.S. ("Goodyear Turkey"), and Goodyear Dunlop Tires France SA ("Goodyear Dunlop France") (sometimes hereinafter referred to as "the foreign Goodyear entities" or "defendants"). The defendants' motions were originally heard on June 11, 2007, and after the taking of a 30(b)(6) deposition of The Goodyear Tire & Rubber Company, followed by the submission of a supplemental affidavit by the deponent, Plaintiffs moved for re-hearing.

STATEMENT OF THE FACTS

The facts are fully set out in the parties' prior briefs. The following undisputed facts are central to the defendants' motions to dismiss. The accident at issue in this case occurred in France, and the causes of the accident are still under investigation. The tire at issue in this case was manufactured in Turkey, "placed into the stream of commerce by being sold in France, and was used in France on a bus licensed to operate in France." (Complaint ¶¶ 28, 31, 102) (As a preliminary matter, each defendant objects to the evidence about products other than the type of tire involved in the accident, but provided the deposition testimony and supplemental affidavit expressly subject to these objections.)

The affidavits filed by defendants in support of their motions to dismiss establish that none of the foreign Goodyear entities conducts or solicits business in North Carolina, provides services or sells

products in North Carolina, or advertises or promotes its products in North Carolina. None of the foreign entities has a place of business, property, bank account, or registered agent in North Carolina, and none has ever been authorized or sought authorization to do business in North Carolina.

Contrary to Plaintiffs' assertion, the 30(b)(6) deposition testimony and supplemental affidavit do not contradict the affidavits initially filed by the defendants, but simply provide additional information consistent with the foreign entities' statements that they do not conduct business in North Carolina. Although none of the foreign Goodyear entities have shipped tires into North Carolina, certain tires manufactured by the foreign entities have ultimately been shipped into North Carolina by The Goodyear Tire & Rubber Company. None of the type of tire at issue in this case has been shipped into North Carolina. (Kramer dep. pp. 19-20)

As established by the 30(b)(6) deposition testimony of Donn Kramer, tires manufactured by foreign Goodyear entities are not manufactured for the purpose of being sold in the United States. Because of the uniqueness of market and performance conditions, including roads, speeds, loads, and tire sizing, it is rare for The Goodyear Tire & Rubber Company to source tires from a foreign manufacturer. (Kramer dep. p. 9) The markets are very different for foreign and US tires, and generally tires manufactured by a foreign entity would need modification in order to be sold in the United States. (Kramer dep. p. 17) The foreign entities do not control the distribution; they just manufacture the tires. (Kramer dep. pp. 36-37) Tires brought into the

United States would be distributed by the North America Tire Group within The Goodyear Tire & Rubber Company. (Kramer dep. pp. 39-40)

Although the 30(b)(6) deponent was unable to fully answer all questions at his deposition, he did testify about the chain of distribution of tires manufactured by the foreign entities, the product involved in this case, and the manufacturer of the product involved in this case. The additional information requested was provided well in advance of the hearing.

ARGUMENT

1. Plaintiffs continue to rely on the stream of commerce argument and cases cited in their previous briefs; none of the "new facts" change the relevant law or how it applies in the instant case.

There is no dispute that this case arises out of a tragic accident and that all sympathies naturally lie with the Plaintiffs. Nevertheless, as compelling as the facts may be, the legal theories put forth by the Plaintiffs in an effort to convince the court that it has jurisdiction over the foreign Goodyear entities simply do not apply to the facts. The court need look no further than the cases cited by Plaintiffs to see that there is no basis for jurisdiction.

A. Placement of products in the stream of commerce is applicable only in cases in which a defendant's product has caused an injury in the forum state under N.C.G.S. 1-75.4(4) and does not establish the "substantial activity" required under N.C.G.S. 1-75.4(1)d.

It is undisputed that the cause of action did not arise in North Carolina, but in France, and that

the accident was completely unrelated to any activity of any Goodyear defendant in North Carolina. Therefore, there can be no "specific jurisdiction," which requires that the cause of action arise within the forum state or be related to a defendant's activities within the state. See Helicopteros Nacionales de Colombia. S.A. v. Hall, 466 U.S. 408, 414, 104 S. Ct. 1868, 1872, 80 L.Ed. 2d 404, 411 (1984).

The "stream of commerce" theory espoused by the Plaintiffs is simply one theory used by courts to satisfy the additional minimum contacts requirement necessary under the Due Process Clause for the exercise under long-arm statutes of personal jurisdiction when a product placed in the stream of commerce by a defendant has caused injury in the forum state. The stream of commerce theory does not provide an independent basis for jurisdiction, but applies only when a product has caused injury in the forum state. See Regent Lighting Corp. v. American Lighting Concept. Inc., 25 F. Supp.2d 705 (M.D.N.C. 1997).

In their memorandum of law, the cases cited by the Plaintiffs illustrate why the stream of commerce argument is inapplicable to the facts of this case: World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S. Ct. 559 (1980) (Personal jurisdiction not found, although accident and injury occurred in the forum state); Bush v. BASF Wyandotte Corp., 64 N.C. App. 42, 306 S.E.2d 562 (1983) (Manufacturer sold washing machine to distributor, which sold the product in North Carolina; use of the product in North Carolina caused injury to North Carolina resident); Le Manufacture Francaise

v. District Court, 620 P.2d 1040 (1980) (Foreign tire on car sold in Colorado, accident and injury occurred in Colorado); Cox v. Hozelock. Ltd., 105 N.C. App. 52, 411 S.E.2d 640 (1992) (Sprayer sold, purchased and used in North Carolina, causing injury in North Carolina).

Simply stated, unless a product caused an injury in the forum state, giving rise to specific jurisdiction, the stream of commerce argument is irrelevant.

B. The stream of commerce theory does not establish long-arm jurisdiction under N.C.G.S. 1-75.4(1)d, which requires "substantial activity within this State" by a defendant.

When, as in the instant case, a cause of action arose outside North Carolina, a court may exercise jurisdiction over a defendant who is engaged in "substantial activity within this State" at the time that service of process is made. The contacts required for this type of general jurisdiction" necessitate "continuous and systematic activity" within the state, as more fully explained in defendants' prior briefs. If Plaintiffs were able to establish that the foreign Goodyear entities were engaged in the type of substantial, continuous and systematic activity within North Carolina sufficient to support a finding of general jurisdiction, they would not need a stream of commerce argument to establish minimum contacts. In other words, if there is general jurisdiction as a result of a defendant's substantial, continuous and systematic activity within the state, Plaintiffs would simply have no need to even raise the issue of a defendant's placement of products in the stream of commerce that may ultimately come

into the state. If Plaintiffs cannot show that defendants are engaged in substantial, continuous and systematic activity within North Carolina, the placement of products in the stream of commerce, by its very nature an activity occurring outside the state, cannot be contorted into a showing of substantial activity within the state.

Significantly, Plaintiffs argue that the factors considered by the courts in analyzing minimum contacts are sufficient to show the continuous and systematic contacts that would support a finding of general jurisdiction, but the only cases Plaintiffs cite in support of the sufficiency of the contacts are cases involving an injury to a plaintiff that occurred within the forum state. (Plaintiffs' memorandum pp. 13-17, citing Cox v. Hozelock, Ltd., 105 N.C. App. 52, 411 S.E.2d 640 (1992); Tom Togs, Inc. v. Ben Elias Industries, Corp., 318 N.C. 361, 348 S.E.2d 782 (1986).

Plaintiffs cannot have it both ways. If they are able to establish that there is substantial activity sufficient to satisfy N.C.G.S. 1-75.4(1)d, then the stream of commerce theory is inapplicable. Conversely, if plaintiffs are unable to show that the defendants are engaged in the type of substantial activity in the state that would satisfy N.C.G.S. 1-75.4(1)d, they may nevertheless obtain jurisdiction, but only if the injury occurred in the state or the defendant's action giving rise to the injury occurred in the state and defendant has minimum contacts with North Carolina. Only then is the stream of commerce theory available, and then only as a means of meeting minimum contacts, not as a means of establishing substantial activity.

In summary, Plaintiffs are unable to establish jurisdiction, because the product at issue in this case was manufactured in Turkey, sold and used in France, and involved in an accident in France. The foreign defendants' placement of products in the stream of commerce that ultimately reached North Carolina does not establish substantial activity, nor does it satisfy the minimum contacts required by the Due Process Clause, because the product did not cause an injury in the state.

CONCLUSION

For the reasons stated above, defendants Goodyear Luxembourg Tires SA, Goodyear Lastikleri T.A.S., and Goodyear Dunlop Tires France SA, respectfully request that the Court dismiss Plaintiffs' claims against them, with prejudice, on the grounds that the court lacks personal jurisdiction over these defendants.

This the 6th day of December, 2007.

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This is to certify that the undersigned has this date served the foregoing in the above captioned matter upon all other parties to this cause by:

hand delivering a copy hereof, properly addressed to the parties listed hereinbelow:

or by

X depositing a copy hereof in a first class postpaid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service, properly addressed to the parties listed hereinbelow.

or by

X facsimile (to William B. Bystrynski, Esq.)

This the 6th day of December, 2007.

/s/ Charlot F. Wood
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No. COA 08-944 FOUR-B DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS,

Plaintiff,

v.

ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR DUNLOP TIRES EUROPE B. V., GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA.,

Defendants.

From Onslow County

****

DEFENDANTS APPELLANTS' BRIEF

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QUESTIONS PRESENTED

I. DID THE TRIAL COURT ERR IN FINDING THAT THE COURT CAN PROPERLY EXERCISE GENERAL JURISDICTION PURSUANT TO N.C. GEN. STAT. §1-75.4 OVER DEFENDANTS GOODYEAR LUXEMBOURG, GOODYEAR TURKEY, AND GOODYEAR FRANCE WHEN THE DEFENDANTS WERE NOT ENGAGED IN SUBSTANTIAL ACTIVITY WITHIN THIS STATE WHEN SERVICE OF PROCESS WAS MADE UPON EACH OF THEM?

II. DID THE TRIAL COURT ERR IN FINDING THAT THE EXERCISE OF GENERAL JURISDICTION OVER DEFENDANTS GOODYEAR

LUXEMBOURG, GOODYEAR TURKEY, AND GOODYEAR FRANCE COMPORTS WITH DUE PROCESS AND DOES NOT OFFEND TRADITIONAL NOTIONS OF FAIR PLAY AND JUSTICE, WHEN THERE IS INSUFFICIENT COMPETENT EVIDENCE OF RECORD TO SUPPORT THE COURT'S FINDINGS THAT THE DEFENDANTS HAD CONTINUOUS AND SYSTEMATIC TIES OR ACTIVITIES WITHIN THE STATE SUCH THAT THE DEFENDANTS COULD REASONABLY ANTICIPATE BEING HALED INTO COURT IN NORTH CAROLINA, AND THE COURT'S CONCLUSIONS OF LAW WERE BASED ON ERRONEOUS FINDINGS OF FACT AND MISAPPLICATION OF THE LAW?

III. DID THE TRIAL COURT ERR IN CONCLUDING THAT THE QUANTITY, NATURE AND QUALITY OF THE DEFENDANTS' CONTACTS WITH NORTH CAROLINA, THE SOURCE AND CONNECTION OF THE CAUSE OF ACTION TO THE CONTACTS, THE INTEREST OF NORTH CAROLINA IN THIS CAUSE OF ACTION, AND THE CONVENIENCE OF THE PARTIES ALL WEIGH IN FAVOR OF GENERAL JURISDICTION OVER THE DEFENDANTS, WHEN THERE IS NO COMPETENT EVIDENCE OF RECORD TO SUPPORT THE COURT'S FINDINGS, AND THE FINDINGS OF FACT ON THESE POINTS ARE ACTUALLY CONCLUSIONS OF LAW RATHER THAN FINDINGS OF FACT?

IV. DID THE TRIAL COURT ERR IN APPLYING STREAM OF COMMERCE ANALYSIS TO

CONCLUDE THAT DEFENDANTS HAVE SUFFICIENT CONTINUOUS AND SYSTEMATIC CONTACTS WITH NORTH CAROLINA TO SATISFY THE MINIMUM CONTACTS REQUIRED BY DUE PROCESS, AND THE COURT'S FINDINGS OF FACT RELATED TO CONTINUOUS AND SYSTEMATIC CONTACT ARE UNSUPPORTED BY COMPETENT EVIDENCE OF RECORD?

STATEMENT OF THE CASE

On 17 April 2006, Plaintiffs filed an unverified Amended Complaint in their wrongful death action against Eric. R. Meter, French Soccer Network, European Soccer Network, and North Carolina Youth Soccer Association, Inc., adding as defendants The Goodyear Tire & Rubber Company ("Goodyear"), Goodyear Dunlop Tires Europe B. V. ("Goodyear Europe"), Goodyear Luxembourg Tires SA ("Goodyear Luxembourg"), Goodyear SA, Goodyear Lastikleri T.A.S. ("Goodyear Turkey"), and Goodyear Dunlop Tires France SA ("Goodyear France"). (R pp. 58-88).

Goodyear Europe, Goodyear Luxembourg, Goodyear SA, Goodyear Turkey, and Goodyear France were served with the Amended Complaint during December 2006 and February 2007, according to the Hague Conventions. (R pp. 2-57). These Defendants filed motions to dismiss for lack of personal jurisdiction pursuant to Rule 12 (b) (2) of the North Carolina Rules of Civil Procedure. (R pp. 93-136) The Motions were argued on 11 June, 2007. (R pp. 139-140).

Plaintiffs subsequently filed voluntary dismissals of defendants Goodyear Europe and

Goodyear SA. (R p. 174) The Motions of Goodyear Luxembourg, Goodyear Turkey, and Goodyear France to dismiss the actions against them for lack of personal jurisdiction, pursuant to Rule 12 (b) (2) of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. §1-75.4 were reheard on 10 December 2007. (R p. 171).

Judge Gary E. Trawick's Order denying Defendants' Motions to Dismiss was filed on 1 May 2008. (R p. 177-183). Defendants' Notice of Appeal from Judge Trawick's Order was filed on 12 May 2008. The Record on Appeal was settled on 26 July 2008. (R p. 189). The Record on Appeal was filed in the Court of Appeals on 8 August 2008 and was docketed on 26 August 2009. (R p. 1).

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

Judge Trawick's denial of Defendants' Motions to Dismiss for lack of personal jurisdiction is immediately appealable pursuant to N.C. Gen. Stat. §1-277(b) (2007). "The denial of a motion to dismiss for lack of jurisdiction is immediately appealable." Bruggeman v. Meditrust Acquisition Co., 138 N.C. App. 612, 615-16, 532 S.E.2d 215, disc. rev. denied, 353 N.C. 261, 546 S.E.2d 90 (2000); Coastal Chem. Corp. v. Guardian Indus., Inc., 63 N.C. App. 380, 269 S.E.2d 217 (1980) (Denial of motion to dismiss for lack of in personam jurisdiction is immediately appealable); Holt v. Holt, 41 N.C.App. 344, 255 S.E.2d 407 (1979) (§1-277 (b) allows a defendant immediate appeal when a trial court denies motion to dismiss on ground of lack of jurisdiction over the defendant). Although interlocutory, the denial of a

motion to dismiss based on lack of personal jurisdiction is immediately appealable pursuant to §1-277 (b), because it involves minimum contacts questions. Banc of Am. Secs. LLC v. Evergreen Int'l Aviation, Inc., 169 N.C. App 690, 611 S.E.2d 179. (2005).

STATEMENT OF THE FACTS

This case arises out of an April 18, 2004 bus accident near Mitry-Mory, France, which resulted in the tragic deaths of Julian David Brown and Matthew M. Helms. (R pp. 58-59). Julian and David had traveled to France to play soccer with the North Carolina Youth Soccer Association ("NCYSA"), and the accident occurred on the way to the airport for the return trip home. (R pp. 61-64). The NCYSA trip included a group of teenaged soccer players from North Carolina, their coaches and several other adults. (R p. 61).

Plaintiffs allege that one of the tires "failed" during the course of the accident. (R p. 65). The tire at issue in this case was manufactured in Turkey, "placed into the stream of commerce by being sold in France, and was used in France on a bus licensed to operate in France." (R pp. 63, 77, 82). The bus involved in the accident was owned by a French corporation and driven by a French driver. (R pp. 63, 77).

Goodyear Luxembourg Tires SA ("Goodyear Luxembourg") is a company organized and existing under the laws of Luxembourg, with its principal place of business in Luxembourg, and is engaged in the business of the manufacture, distribution, and sale of tires. (R p. 105).

Goodyear Lastikleri T.A.S. ("Goodyear Turkey") is a company organized and existing under the laws of Turkey, with its registered office in Istanbul, and is engaged in the business of the manufacture, distribution, and sale of tires. (R p. 119).

Goodyear Dunlop Tires France SA ("Goodyear France") is a company organized and existing under the laws of France, with a principal place of business in France, and is engaged in the business of the manufacture and distribution of tires. (R p. 133). (Goodyear Luxembourg, Goodyear Turkey, and Goodyear France are sometimes hereinafter referred to collectively as "the foreign Goodyear entities" or "Defendants.")

Goodyear Luxembourg, Goodyear Turkey, and Goodyear France each filed motions to dismiss for lack of personal jurisdiction pursuant to Rule 12 (b) (2) of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. §1-75.4, North Carolina's Long-arm statute. (R pp. 101-107, 115-132, 129-136). In support of their respective motions to dismiss, each of the Defendants submitted an affidavit by an executive, director, and/or officer of the company who has personal knowledge of the facts set out in the affidavit. (R pp. 106-107, 117-128, 133-136). Their respective affidavits conclusively establish that none of the Defendants conducts business in North Carolina. (R pp. 106-107, 117-128, 133-136) . Each affiant confirms, among other things, that each entity does not conduct or solicit business in North Carolina, that it does not provide services or sell, manufacture, or design products in North Carolina, that it does not advertise or promote its products in North Carolina, that it has no place of business, employee, sales

representative, property, or bank accounts in North Carolina, that is has no registered agent in North Carolina, that it has not entered contracts, paid taxes, or conducted meetings in North Carolina, and that it has never been authorized or sought authorization to do business in North Carolina. (R pp. 106-107, 117-128, 133-136).

None of the Defendants have themselves shipped tires into North Carolina (R pp. 106-107, 117-128, 133-136), Kramer dep. p. 59, R p. 179). However, certain tires manufactured by the Defendants have ultimately and indirectly been shipped into North Carolina. (Kramer dep. p. 59)

From 2004 through approximately November, 2007, approximately 6402 tires manufactured by Goodyear Luxembourg were indirectly shipped into North Carolina, but they were not shipped into North Carolina by Goodyear Luxembourg. (R p. 166, Kramer dep. p. 59, R p. 179). These tires were certain high performance vehicle passenger tires and commercial truck and trailer tires. (R p. 166).

From 2004 through approximately November, 2007, approximately 5906 tires, consisting of 1847 truck tires and 4059 passenger tires, manufactured by Goodyear Turkey were indirectly shipped into North Carolina, but they were not shipped into North Carolina by Goodyear Turkey (R p. 166, Kramer dep. pp. 25-26, R p. 179).

From 2004 through approximately November, 2007, approximately 33,923 tires manufactured by Goodyear France were indirectly shipped into North Carolina, but they were not shipped into North Carolina by Goodyear France. (R p. 166, 179) These tires were passenger vehicle tires. (R p. 166).

The markets are very different for foreign and US tires, and generally tires manufactured by a foreign entity would need modification in order to be sold in the United States. (Kramer dep. p. 17). Because of the different market conditions and performance characteristics, including roads, speeds, tire load carrying capacity, and tire sizing, it is rare for tires to be sourced from a foreign manufacturer. (Kramer dep. pp. 9-10). The foreign entities do not control the distribution of their tires; they just manufacture the tires. (Kramer dep. pp. 36- 37).

The tire involved in the instant case is a "regional haul steer," which is a tire designed for trucks, trailers or buses for regional highway use. (Kramer dep. pp. 13-14).

None of the type of tire at issue in this case has been shipped into North Carolina. (Kramer dep. pp. 19-20). Plaintiffs provided an affidavit from Robert C. Ochs, a registered professional engineer who formerly worked for Michelin Tire Corporation. Mr. Ochs traveled to France to examine the tire, and Plaintiffs produced photographs of the tire. The serial number on the tire indicates that it was manufactured in Turkey, and the tire has U.S. codes for load and pressure ratings and a "safety warning" and other markings in English. (R p. 143).

ARGUMENT

I. STANDARD OF REVIEW.

On appeal, the trial court's findings of fact are reviewed to determine whether they are supported by

competent evidence. Cooper v. Shealy, 140 N.C. App. 729, 732, 537 S.E.2d 854, 856 (2000).

A trial court's conclusions of law that it lacks personal jurisdiction are reviewed *de novo*. Starco, Inc., v. AMG Bonding & Ins. Servs., Inc., 124 N.C. App. 332, 336, 477 S.E.2d 211, 215 (1996).

"Matters of judgment are not factual; they are conclusory and based ultimately on various factual considerations. Facts are things in space and time that can be objectively ascertained by one or more of the five senses or by mathematical calculation. Facts, in turn, provide the bases." State ex rel. Utils. Comm. v. Public Staff, 322 N.C. 689, 693, 370 S.E.2d 567, 570 (1988). "[I]f a finding of fact is essentially a conclusion of law it will be treated as a conclusion of law which is reviewable on appeal." In re M.R.D.C, 166 N.C. App. 693, 697, 603 S.E.2d 890, 893 (2004).

II. BURDEN OF PROOF.

When a court's personal jurisdiction over a defendant is challenged pursuant to Rule 12 (b) (2) of the North Carolina Rules of Civil Procedure, the burden is on the plaintiff to prove the existence of jurisdiction by showing the statutory grounds for personal jurisdiction. Marion v. Long, 72 N.C. App. 585, 325 S.E.2d 300, cert. denied and appeal dismissed, 313 N.C. 604, 330 S.E.2d 612 (1985). Once the case moves beyond the procedural standpoint of competing affidavits to an evidentiary hearing, such as in the instant case, where the parties argued facts based on depositions, the court must act as a fact finder in preponderance of the evidence, deciding the question of personal jurisdiction by a Deer Corp. v. Carter, 177 N. C. App. 314, 629 S.E.2d 159 (2006).

Therefore, plaintiff had the "ultimate burden of proving jurisdiction" rather than "the initial burden of establishing *prima facie* that jurisdiction [was] proper." Id. (citing Bruggeman, 138 N.C. App. at 615, 532 S.E.2d at 217).

> In a situation where a defendant submits evidence to counter the allegations in a plaintiff's complaint, those allegations can no longer be taken as true and the plaintiff can no longer rest on the allegations.

Lulla v. Effective Minds, LLC et al., 184 N.C. App. 274, 646 S.E.2d 129 (2007). Rather, he must by affidavit or otherwise . . . set forth specific facts showing that the court has jurisdiction. Bruggeman, supra.

> [I]n order to determine whether there is evidence to support an exercise of personal jurisdiction, the [trial] court then considers (1) any allegations in the complaint that are not controverted by the defendant's affidavit and (2) all facts in the affidavit (which are uncontroverted because of the plaintiff's failure to offer evidence).

Banc of Am. Secs. LLC v. Evergreen Int'l Aviation, Inc., 169 N.C. App. 690, 693-4, 611 S.E.2d 179, 182-83 (2005).

III. THE TRIAL COURT ERRED IN FINDING THAT THE COURT CAN PROPERLY EXERCISE GENERAL JURISDICTION PURSUANT TO N.C. GEN. STAT. §1-75.4 OVER DEFENDANTS GOODYEAR LUXEMBOURG, GOODYEAR TURKEY, AND GOODYEAR FRANCE WHEN THE

DEFENDANTS WERE NOT ENGAGED IN SUBSTANTIAL ACTIVITY WITHIN THIS STATE WHEN SERVICE OF PROCESS WAS MADE UPON EACH OF THEM.

ASSIGNMENTS OF ERROR NOS. 20, 23, 24 R pp. 192-193

A. Personal Jurisdiction Requires a Two Part Analysis Under North Carolina Law.

In order to establish personal jurisdiction, the court engages in a two-part analysis. The court must first determine whether N.C. Gen. Stat. §1-75.4, North Carolina's "long-arm statute," confers jurisdiction over the defendant. If so, the court must then determine whether the exercise of jurisdiction meets constitutional standards of due process. Charter Medical, Ltd. v. Zigmet, Inc., 173 N.C. App. 213, 617 S.E.2d 352 (2005); Cameron-Brown Co. v. Daves, 83 N.C. App. 281, 350 S.E.2d 111 (1986).

B. General and Specific Jurisdiction.

Personal jurisdiction may be either general jurisdiction or specific jurisdiction. General jurisdiction exists when a suit does not arise out of a defendant's activities within the forum state, but there are sufficient contacts between the forum state and the defendant. Havey v. Valentine, 172 N.C. App. 812, 815, 616 S.E. 2d 642, 647 (2005) (citing Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 n. 9, 80 L. Ed. 2d 404, at 411 n. 9 (1984)). By contrast, when the cause of action does arise out of a defendant's contacts with the forum state, specific jurisdiction exists. Charter Medical, Ltd. v. Zigmed, Inc., 173 N.C. App. 213, 617 S.E.2d

352 (2005). "Specific jurisdiction exists when a defendant has 'purposely directed its activities toward the resident of the forum and the cause of action relates to such activities'." Wyatt v. Walt Disney World Co., 151 N.C. App. 158, 165, 565 S.E.2d 795, 710 (2002).

1. General Jurisdiction under North Carolina's Long-arm Statute.

General jurisdiction, which may be asserted even when the cause of action is unrelated to the defendant's activities in the forum, may be established pursuant to N.C. Gen. Stat. §1-75.4(1)(d), which provides, in pertinent part, that a North Carolina Court has jurisdiction over a person under the following circumstance:

> Local Presence or Status. – In any action, whether the claim arises within or without this State, in which a claim is asserted against a party who when service of process is made upon such party: . . .
>
> d. Is engaged in substantial activity within this State, whether such activity is wholly interstate, intrastate, or otherwise.

N.C. Gen. Stat. §1-75.4(1)(a) (2007) (emphasis added).

2. Specific Jurisdiction under North Carolina's Long-arm Statute.

Specific jurisdiction, which may be exercised over a defendant only when the cause of action arose within the state or is related to a defendant's activities within the state, may be established pursuant to N.C. Gen. Stat. §1-75.4(4)b, which provides, in pertinent part:

> Local Injury: Foreign Act. – In any action for wrongful death occurring within this state or in any action claiming injury to person or property within this state arising out of an act or omission outside this State by the defendant, provided in addition that at or about the time of the injury: . . .
>
> b. Products, materials or thing [sic] processed, serviced or manufactured by the defendant were used or consumed, within this State in the ordinary course of trade.

N.C. Gen. Stat. §1-75.4(4)(b) (2007) (emphasis added).

C. Plaintiffs Cannot Establish General Jurisdiction Pursuant to N.C. Gen. Stat. §1-75.4(1) (d), Which Requires Substantial Activity Within the State by Defendants.

It is undisputed that specific jurisdiction is inapplicable on the facts of the instant case, because since the tire at issue was manufactured in Turkey, sold and used in France, and the accident occurred in France. (R pp. 82, 143). There is no evidence that the Defendants conducted any activity whatsoever in North Carolina, much less "substantial activity." Defendants have established, through their affidavits that, among other things, they do not conduct or solicit business in North Carolina, provide services or sell products in North Carolina, advertise or promote their products in North Carolina, and that they have no place of business, employees, or property in North Carolina. (R pp. 105-107, 119-121, 133-136). Stream of commerce theory cannot be used to establish

general jurisdiction, because it is simply a means available, in specific jurisdiction cases, to determine whether sufficient minimum contacts exist to satisfy Due Process. Defendants' affidavits are uncontested on these points, because Plaintiffs have come forward with no evidence to counter any of the statements made by the affiants. Therefore, Plaintiffs are unable to show grounds for general jurisdiction under N.C. Gen. Stat. § 1-75.4 (1) (d).

IV. THE TRIAL COURT ERRED IN FINDING THAT THE EXERCISE OF GENERAL JURISDICTION OVER DEFENDANTS GOODYEAR LUXEMBOURG, GOODYEAR TURKEY, AND GOODYEAR FRANCE COMPORTS WITH DUE PROCESS AND DOES NOT OFFEND TRADITIONAL NOTIONS OF FAIR PLAY AND JUSTICE, WHEN THERE IS INSUFFICIENT COMPETENT EVIDENCE OF RECORD TO SUPPORT THE COURT'S FINDINGS THAT THE DEFENDANTS HAD CONTINUOUS AND SYSTEMATIC TIES OR ACTIVITIES WITHIN THE STATE SUCH THAT THE DEFENDANTS COULD REASONABLY ANTICIPATE BEING HALED INTO COURT IN NORTH CAROLINA, AND THE COURT'S CONCLUSIONS OF LAW WERE BASED ON ERRONEOUS FINDINGS OF FACT AND MISAPPLCIATION OF THE LAW.

ASSIGNMENTS OF ERROR NOS. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 22, 24 R pp. 190-193

Even if the plaintiffs could show that North Carolina's long-arm statute subjects the foreign Goodyear entities to jurisdiction in North Carolina, the exercise of jurisdiction over the foreign Goodyear entities would violate constitutional Due Process. A court cannot expand the reach of state jurisdiction over non-resident defendants beyond Due Process limitations; a foreign defendant must have sufficient minimum contacts with North Carolina to support jurisdiction. First Nat'l Bank v. General Funding Corp., 30 N.C. App. 172, 226 S.E.2d 527 (1976).

In order for a court to comply with Due Process in its exercise of personal jurisdiction over a defendant, a defendant must have "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Tejal Vyas, LLC v. Carriage Park Limited Partnership, 166 N.C. App. 34, 600 S.E.2d 881 (2004) (citing International Shoe Co., 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L.Ed. 95, 102 (1945) (citations omitted). To establish such minimum contacts, the defendant must have "purposefully availed itself of the privilege of conducting activities in the forum state and invoked the benefits and protections of the laws of North Carolina." Id. (citations omitted). Further, the contacts "must be such that the defendant should 'reasonably anticipate being haled into' a North Carolina court." Id, (citing Cherry Bekaret & Holland v. Brown, 99 N.C. App. 626, 632, 394 S.E.2d 651, 656 (1990).

A. The Sufficiency of Contacts Required to Satisfy Due Process is Higher for General Jurisdiction Than For Specific Jurisdiction.

The minimum contacts necessary to meet due process requirements vary according to whether general or specific jurisdiction is involved. Ash v. Burnham Corp., 80 N. C. App. 459, 343 S.E.2d 2, aff'd, 318 N.C. 504, 349 S.E.2d 579 (1986). Where there is specific jurisdiction, "the court analyzes the relation among the defendant, cause of action, and forum state." Charter Medical, 173 N.C. App. at 216, 617 S.E.2d at 355. However, in cases involving general jurisdiction,

> [t]he sufficiency of contacts threshold is elevated when the cause does not arise in the forum state or derive from the foreign corporation's transactions in the state. . . The United States Supreme Court has characterized the test to be applied when a plaintiff's claim does not arise out of or relate to a defendant's activities in the forum state as whether the contacts are of a 'continuous and systematic' nature.

Ash, 80 N.C.App. at 461, 343 S.E. 2d at 3. (citations omitted).

In Fraser v. Littlejohn, 96 N.C. App. 377, 386 S.E. 2d 230 (1989), plaintiffs sought to establish general jurisdiction pursuant to N.C. Gen. Stat. §1-75.4(1)(d), which requires "substantial activity within the state." The Court noted that in order to be subject to personal jurisdiction, a defendant "must take some purposeful action within the forum state that invokes for defendant the benefits and protections of the forum state's laws." (citations omitted).

The Fraser court held that it could exercise general jurisdiction without offending traditional notions of fair play and substantial justice because

the defendant had the following sufficient "continuous and systematic contacts" with North Carolina: (1) defendant had completed tax returns for customers at a Charlotte office for three years; (2) defendant was personal, financial, and property manager for a Charlotte resident; (3) he resided in Charlotte on a continual basis from the spring of 1984 until 1986; (4) during 1984, defendant received over $20,000 for managing North Carolina property; (5) he prepared and used letterhead with a North Carolina address; (6) he purchased real estate in North Carolina, with the related paperwork and correspondence sent to him at a North Carolina address; and (7) he is beneficiary of both real and personal property valued in excess of $300,000 of a North Carolina estate. The court concluded that such activities by the defendant demonstrated conduct "comparable to the contacts undertaken by normal citizens of this state," and by undertaking such "purposeful activities," the defendant had invoked the benefits and protection of North Carolina law and satisfied the minimum contacts requirements sufficient for the court to exercise general jurisdiction over him. Id. at 384, 386 S.E. 2d at 235.

In contrast, in Ash v. Burnham Corp., 80 N.C. App. 459, 343 S.E.2d 2, aff'd, 318 N.C. 504, 349 S.E.2d 579 (1986), the Court declined to exercise general jurisdiction over a New York corporation in an action involving an injury from the use of the defendant's product in Ohio. The Court held that the contacts of the defendant with North Carolina did not rise to the level of "continuous and systematic" contacts that would give rise to general jurisdiction when the activities of the defendant included: (1) the sale of approximately $520,000 worth of boilers to

North Carolina customers in 1984; (2) those sales were solicited and sold in North Carolina through independent contractors; (3) the company placed ads in national magazines which reached North Carolina; and (4) the company had a wholly owned subsidiary which was authorized to do business no North Carolina.

B. Plaintiffs are Unable to Establish That the Exercise of General Jurisdiction over Defendants Comports with Due Process, Because Plaintiffs Have Produced No Evidence that Defendants were involved in Continuous and Systematic Activity within North Carolina.

Although Plaintiffs seek to have the court exercise general jurisdiction over the Defendants, Plaintiffs have come forward with no evidence that Defendants have continuous and systematic contacts with North Carolina. As discussed above, Plaintiffs have come forward with no evidence to refute the direct statements of the Defendants, which establish that the Defendants are not engaged in any activity within North Carolina. Plaintiffs provided an affidavit from Robert C. Ochs, a registered professional engineer who formerly worked for Michelin Tire Corporation, apparently in an effort to show that Defendants had taken some action which could somehow support the exercise of jurisdiction over them without violating due process. However, Mr. Ochs' affidavit is both incompetent and insufficient to do so.

Mr. Ochs traveled to France to examine the tire, and the only first-hand knowledge he has that is related to this case is that he examined the tire itself and can describe its appearance. (R p. 142). Mr. Ochs'

affidavit stated that there were DOT markings placed on the tire to "allow it to be sold in the United States," and markings and wording in English to show that it was manufactured as qualified for sale in the United States. (R p. 143). Although he can describe its appearance and the markings on it, he has no basis for stating the intentions of the manufacturer of the tire. He has never worked for any Goodyear entity, and he simply states his opinion as to why markings were place on the tire and what he interprets those markings to mean. (R p. 143).

Donn Kramer, on the other hand, has direct knowledge of the manner in which tires manufactured by foreign Goodyear entities may be brought into the United States, and Mr. Kramer's testimony, which is factual and based on first-hand knowledge, establishes that the markings in English do not mean that the tire was manufactured for use in the United States, or even that it was manufactured to specifications such that it could be imported into the United States for sale. (Kramer dep. p. 15) Mr. Ochs's statement is not competent to refute the testimony of Donn Kramer of Goodyear, because Mr. Ochs' statement is a statement of opinion, not a statement of fact based on personal knowledge. Therefore, Findings of Fact numbers 4 and 5 (R pp. 178-79), which are based solely on incompetent statements in Mr. Ochs' affidavit, and which are directly contradicted by Donn Kramer's testimony, are unsupported by competent evidence of record and, to the extend that such findings may be viewed as support for the court's conclusions of law, they should be overturned.

V. THE TRIAL COURT ERRED IN CONCLUDING THAT THE QUANTITY, NATURE AND QUALITY OF THE DEFENDANTS CONTACTS WITH NORTH CAROLINA, THE SOURCE AND CONNECTION OF THE CAUSE OF ACTION TO THE CONTACTS, THE INTEREST OF NORTH CAROLINA IN THIS CAUSE OF ACTION, AND THE CONVENIENCE OF THE PARTIES ALL WEIGH IN FAVOR OF GENERAL JURISDICTION OVER THE DEFENDANTS, WHEN THERE IS NO COMPETENT EVIDENCE OF RECORD TO SUPPORT THE COURTS FINDINGS, AND THE FINDINGS OF FACT ON THESE POINTS ARE ACTUALLY CONCLUSIONS OF LAW RATHER THAN FINDINGS OF FACT.

ASSIGNMENTS OF ERROR NOS. 16, 17, 18, 21 R pp. 190-191

North Carolina courts generally consider several factors in determining whether sufficient minimum contacts exist to support personal jurisdiction over a foreign defendant including: (1) the quantity of contacts, (2) the nature and quality of the contacts, (3) the source and connection of the cause of action to the contacts, (4) the interest of the forum state, and (5) the convenience of the parties. See, e.g., Tejal Vyas 166 N.C. App. at 40, 600 S.E.2d at 886, (quoting Cherry Bekaret & Holland, 99 N.C. App. at 632, 394 S.E.2d at 655); Charter Medical, Ltd. v. Zigmed, Inc., 173 N.C. App. 213, 617 S.E.2d 352 (2005).

It is noteworthy that the minimum contacts factors set out above do not come into play unless jurisdiction under the long-arm statute has already

been found to exist. However, assuming, arguendo, that the court would reach this consideration, the evidence before the court establishes that each of these factors weighs against a finding of minimum contacts. Therefore, the judge's finding and conclusions were in error.

(1) the quantity of the Defendants contacts with North Carolina.

None of the defendants has any contact with North Carolina, as established by their affidavits. The only "contact" is that tires manufactured by the Defendants have ended up in North Carolina, although, as found by the trial court, not as a result of being shipped here by Defendants.

Over a period of approximately three years, 5906 tires from Turkey, 33,923 tires from France, and 6,402 tires from Luxembourg ended up in North Carolina. (R pp. 166-179) There is no evidence that any of these foreign entities knew that any of their products could end up in North Carolina. Although Donn Kramer testified that a small number of tires for unique applications, such as unique sizes for European vehicles, come into the United States on a regular basis, there is no evidence that any tires from any of the defendants came into North Carolina on a regular basis. (Kramer dep. p. 21)

(2) the nature and quality of the Defendants contacts with North Carolina

It is difficult to analyze the nature and quality of the Defendants' contacts with North Carolina, when there simply are no contacts. That the Defendants manufacture tires in foreign countries that, indirectly and on a very limited basis, may end up in North Carolina, cannot be construed as being of

a nature and quality that would support personal jurisdiction.

(3) source and connection of the cause of action to the contacts.

There is no connection between the cause of action and the "contacts." The accident occurred in France, and no tires of the type involved in the accident in France have been shipped into North Carolina. Limited numbers of tires, of a different type from the one involved in the accident in France, have indirectly ended up in North Carolina. The manufacture, sale, and use of the tire involved in the accident, as well as the accident itself, happened in foreign countries.

(4) the interest of the forum state,

Although it is acknowledged that North Carolina has an interest in providing a forum for redress of injuries, North Carolina courts may not do so unless it can do so within the constraints of due process.

(5) the convenience of the parties.

Plaintiffs may argue that it is less inconvenient for the defendants to litigate in North Carolina than for the parents involved in this case to litigate in France, because defendants are businesses rather than individuals. However, it is noteworthy that the Plaintiffs have already retained an expert to assist them in France, as evidenced by the affidavit of Robert Ochs, who has traveled to France to examine the tire, and Plaintiffs have produced photographs of the tire, which were taken in France. Additionally, all of the witnesses to the accident and the physical evidence are located in France. Therefore, the

inconvenience and expense to all parties would be increased by requiring the case to be litigated in North Carolina, even assuming that the witnesses could be compelled to appear here.

In summary, each of the factors that the courts generally consider as part of a minimum contacts analysis weigh against a finding of personal jurisdiction in this case.

VI. THE TRIAL COURT ERRED IN APPLYING STREAM OF COMMERCE ANALYSIS TO CONCLUDE THAT DEFENDANTS HAVE SUFFICIENT CONTINUOUS AND SYSTEMATIC CONTACTS WITH NORTH CAROLINA TO SATISFY THE MINIMUM CONTACTS REQUIRED BY DUE PROCESS, AND THE COURT'S FINDINGS OF FACT RELATED TO CONTINUOUS AND SYSTEMATIC CONTACT ARE UNSUPPORTED BY COMPETENT EVIDENCE OF RECORD.

ASSIGNMENTS OF ERROR NOS. 4, 5, 6, 7, 8, 9,11, 12, 13, 19, 20 R pp. 190-193

It is undisputed that the cause of action did not arise in North Carolina, but in France, and that the accident was completely unrelated to any activity of any Goodyear defendant in North Carolina. Therefore, there can be no "specific jurisdiction," which requires that the cause of action arise within the forum state or be related to a defendant's activities within the state. See Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408,

414, 104 S. Ct. 1868, 1872, 80 L.Ed. 2d 404, 411 (1984).

Nevertheless, Plaintiffs argue that by placing goods in the stream of commerce that may reach the United States and, ultimately and indirectly, North Carolina, Defendants are engaging in the type of "substantial activity within this State" that would support a finding of general jurisdiction under N.C. Gen. Stat. §1-75.4 (1) (d).

Plaintiffs' reliance on the stream of commerce theory is misplaced because, contrary to plaintiffs' argument, the stream of commerce theory does not provide an independent basis for the exercise of jurisdiction, but applies only in cases in which there is already specific jurisdiction over a defendant. Biggs v. Bass Pro Outdoor World, LLC, 2005 WL 1511129 (N.D.Tex. June 27, 2005); Gulf Consol. Servs., Inc. v. Corinth Pipeworks, SA, 898 F.2d 1071, 1073 (5th Cir. 1990); Regent Lighting Corp. v. American Lighting Concept, Inc., 25 F. Supp.2d 705 (M.D.N.C. 1997).

The United States District Court for the Middle District of North Carolina has affirmed this principle: "The stream of commerce theory for asserting personal jurisdiction is inapplicable in a case such as this where the cause of action did not arise from the manufacturer's products in the forum state." DP Environmental Services, Inc. v. Bertlesen, 834 F.Supp. 162, 166 (M.D.N.C. 1993). Although DP Environmental involved patent infringement, other cases have recognized that the stream of commerce theory applies in causes of action other than personal injury or product liability; the crucial inquiry is whether or not the cause of action arose from the use

of the product in the forum state. See, e.g. Biggs v. Bass Pro Outdoor World, LLC, 2005 WL 1511129 (N.D.Tex. June 27, 2005) (applying stream of commerce analysis in copyright case).

The seminal stream of commerce case is World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S. Ct. 559 (1980), which states:

> "... if the sale of a product of a manufacturer or distributor...is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, if its allegedly defective merchandise has **there** been the source of injury to its owner or others.

World-Wide Volkswagen at 297, 100 S.Ct. at 567 (emphasis added).

The "stream of commerce" theory espoused by the Plaintiffs is simply one theory used by courts to satisfy the additional minimum contacts requirement necessary under the Due Process Clause for the exercise under long-arm statutes of personal jurisdiction when a product placed in the stream of commerce by a defendant has caused injury in the forum state, in other words, specific jurisdiction. See, e.g., Regent Lighting Corp. v. American Lighting Concept. Inc., 25 F. Supp.2d 705 (M.D.N.C. 1997) .

In Regent Lighting Corp. v. American Lighting Concept. Inc., 25 F. Supp.2d 705 (M.D.N.C. 1997), a case involving alleged violations of the Lanham Act, the North Carolina plaintiff sought to establish general personal jurisdiction over a California manufacturer of security lights by relying on stream of commerce theory. The court declined to apply the

stream of commerce theory in that instance, stating that "[r]egardless of the exact contours of the theory, however, the stream of commerce theory is simply inapplicable in this case." Id. (citing DP Environmental Servs., Inc. v. Bertlesen, 834 F. Supp. 162, 166 (M.D.N.C. 1993). The Regent court then noted that the allegedly infringing product never entered North Carolina through the stream of commerce, and

> "[t]he only products manufactured by Defendants which did enter North Carolina are entirely unrelated to the present suit. In short, the stream of commerce theory, which is based on notions of specific jurisdiction, may not provide grounds for personal jurisdiction when the product at issue in the litigation is not the product that entered the forum jurisdiction through the stream of commerce."

Regent Lighting, 25 F. Supp.2d at 711-12.

Each of the cases cited by the Plaintiffs in the court below, which they will presumably rely upon here, involve the use of the product and resulting injury in the forum state. See, e.g., Bush v. BASF Wyandotte Corp., 64 N.C. App. 42, 306 S.E.2d 562 (1983) (Manufacturer sold washing machine to distributor, which sold the product in North Carolina; use of the product in North Carolina caused injury to North Carolina resident); Le Manufacture Francaise v. District Court, 620 P.2d 1040 (1980) (Foreign tire on car sold in Colorado, accident and injury occurred in Colorado); Cox v. Hozelock, Ltd., 105 N.C. App. 52, 411 S.E.2d 640 (1992) (Sprayer sold, purchased and

used in North Carolina, causing injury in North Carolina).

Plaintiffs cannot have it both ways. If they are able to establish that there is substantial activity sufficient to satisfy N.C. Gen. Stat. §1-75.4(1)d, then there is general jurisdiction, and the stream of commerce theory is inapplicable. Conversely, if plaintiffs are unable to show that the defendants are engaged in the type of substantial activity in the state that would satisfy N.C. Gen. Stat. §1-75.4(1)d, they may nevertheless obtain specific jurisdiction under N. C. Gen. Stat. §1 75.4 (4) b, but only if the injury occurred in the state and defendant has minimum contacts with North Carolina. Only then is the stream of commerce theory available, but as a means of meeting minimum contacts in a specific jurisdiction case, not as a means of establishing general jurisdiction.

CONCLUSION

For the reasons stated above, Defendants Appellants respectfully request that the Court reverse the trial court's Order of 1 May 2008 and dismiss the Amended Complaints against Defendants Goodyear Luxembourg, Goodyear Turkey, and Goodyear France on the grounds that the Court lacks jurisdiction over these Defendants, pursuant to Rule 12(b)(2) of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. § 1-75.4.

Respectfully submitted this the 26th day of September, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Appellants' Brief by depositing a copy hereof in a postpaid wrapper in a post office or official depository by first class mail under the exclusive care and custody of the United States Post Office Department properly addressed to the following:

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IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

EDGAR D. BROWN, et al.,

Plaintiffs,

-vs-

ERIC R. METER, et al.,

Defendants.

CASE NO. 05 CVS 1922
30 (b) (6) DEPOSITION

– – – –

Deposition of DONN P. KRAMER, taken as if upon cross-examination before X. John Revmatas, a Registered Professional Reporter, a Notary Public within and for the State of Ohio, at the offices of Roetzel & Andress, 222 South Main Street, Suite 400, Akron, Ohio, at 10:00 a.m. on Friday, September 28, 2007, pursuant to notice and/or stipulations of counsel, on behalf of the Plaintiffs in this cause.

– – – –

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contacted Europe or you contacted Turkey, you may be calling them to try to determine where is the best place to either help with the production or help with the design or help with manufacturing, is that a fair way to state it?

MS. WOOD: Objection to form.

Q. Go ahead.

A. Generally most of the products because of their unique performance characteristics and the different market conditions are sourced domestically, so it's rare that we -- Goodyear as a company, as most whether it's Michelin or Bridgestone, kind of work and source domestically. And then if there's rare exceptions where there's vehicles that come in from a different region of the world and you require a product, then we go to the area and source the product in, but there's not a lot of global platforms that are set up to do automatic sourcing of product to bring it in.

Prime example is Europe, there's a lot of similarity between the Asian, Eastern and Western European markets, those are uniquely different in general than United States, Canada, and Mexico. The roads are different, the speeds are different, the tire load carrying capacity is different, and the tire sizing is different. As a result there aren't many opportunities to source the product from some of these other areas of the world because each market is unique and that's why we try to source from within most of the time.

Q. Thank you. Well, that's been very helpful.

MR. KIRBY: Now, let me hand you,

this is the deposition notice for today and I would like to mark this as Exhibit 1 to the deposition, if you would.

(Thereupon, Plaintiffs' Exhibit 1, Amended Notice of 30(b) (6) Deposition of the Goodyear Tire & Rubber Company, was marked for purposes of identification.)

Q. First of all, Mr. Kramer, do you know, how are you selected as the person to appear today and to offer testimony on behalf of Goodyear Tire?

A. Internal counsel had come to me and asked - -

MS. WOOD: Excuse me.

I'll object to any attorney/ client privilege communication.

other source that you reviewed or other materials you reviewed before coming in today to try to discuss these topics?

A. No.

Q. Let me begin with what's under Subparagraph A to the notice of deposition. The question is about the Goodyear Regional RHS tire and the question about is its chain of distribution and whether those tires were eventually shipped or sold to the US.

My first question is, are you familiar with this Goodyear Regional RHS tire?

A. It's one that we normally, again, do not distribute in the States or Canada. Suffixes says would say that it's a regional haul steer, that's the kind of a global definition for it.

Q. Okay. Why would it be described as a regional haul steer, is that a -- does that mean it's a tire intended to be mounted at the front of a vehicle or on the steering wheels of the vehicle or --

A. Well, it could be on the front or rear. It's a ribbed design or slash all-position, so it's designed for a highway use. Easiest way to describe regional, at least how we describe it in the US would be, it goes out and back same day so it's domicile versus a long haul where they may go out and stay out and travel the complete United States, so they don't really come back to a specific area every day, so they're generally traveling three or 400 miles out and/or back or significantly less than that, so that's kind of the definition for regional.

Q. And what would be the what you would believe to be the design application for this tire, what types of vehicles would this tire be used on?

A. Well, generally, I would say the way we would define it Class 6, 7 or 8. Class 6, 7, and 8 are based on gross vehicle weight. There could be a single screw, so you have four drive tires on the back and two steer tires. You could have tandem on the back and two steer tires, so a total of ten tires. You could have a straight truck, not a tractor that hooks onto a trailer, but just a straight truck that would be two on the front and four on the back. You could also have buses and they could be on buses.

Q. Okay. Now, this particular tire or this type of tire, do you know where these tires are presently manufactured?

A. They could be manufactured in Europe and – I don't know. This is a European designation, so the assumption would be it would be in Eastern and Western Europe.

Q. Okay. Are these tires manufactured to US specifications and is DOT specifications and tire and rim specifications so that they can be used in North America or the US market if a decision was made to do so?

MS. WOOD: Object to the form.

A. Well, generally DOT doesn't necessarily mean that the tire is destined to be used in the United States and that it's built 100 percent to the United States' specifications or to Latin Americas or to Asias as an example. Again, the reason being is the roads, the speeds, the weights. European roads are different, the speeds are different, and the loads are extremely a lot heavier than what we would normally experience in the States, so the constructions and materials and compounding are different than in most instances than what we would utilize in the States. Just because it has DOT on it or an identification number, doesn't necessarily mean it's destined for the United States.

say does that tire meet the specifications required for our markets and our applications. Very few do and most of the time the tires have to be modified, especially for compounding, and sometimes there are some different materials that would be made for our

market versus Europe. It's rare that we would ever bring in a tire into this country and just take it at the face value of the spec that was for Europe.

Q. All right. Now, just so I will understand, have you done any research or inquiry to determine if any of the Goodyear Regional tires were shipped either to distributors or to others for eventual shipment into the United States, distribution into the United States?

MS. WOOD: Objection.

Go ahead. You can go ahead and answer.

A. Basically the subject tire there has been none of that size with one exception that has come into the United States. The size is not used in the United States. The exception was the fact that we had a strike last year in October and we had no production out of our union facilities from October through December, so in November we

tires in that line were shipped to the United States and sold in the US market even though they may have been different tire sizes or different I guess widths as well as, you know, rim size tires?

MS. WOOD: Objection.

A. There's different rim sizes that could have come in but, again, most went back, but put it in probably perspective, it's very, very, very small numbers, I mean like decimal points compared to our requirement.

Q. To try to get some sense of this.

I mean, tires were shipped into the US that were Goodyear Regional RHS tires, at least this was about approximately a year ago when a strike was going on, some came in the very same size as the tire at issue in this case, and some came into the US in different sizes and those that came into the US in different sizes, did they get distributed out and sold in markets here in the US?

MS. WOOD: Objection.

A. Very few.

Q. Okay.

A. Minimal.

Q. But some tires did get shipped out?

A. Yeah, there might have been a couple hundred that would have gotten shipped out in other sizes.

Q. I understand.

Do you know if any of those tires were sold in North Carolina?

A. Zero.

Q. Okay. Do you know what States those tires were sold?

A. Not off the top, but I -- I do not have that data with me.

Q. Okay. When those tires were distributed and sold here in the US, was there any exclusion or ban on selling any of those tires in North Carolina, even though you say none got sold, there wasn't any ban on selling them?

A. There was no ban.

Q. All right. Now, other than this shipment of Goodyear Regional RHS tires, did you determine if

any other of these tires, and I'm talking about the Goodyear Regional line, were any other tires shipped to the United States for sale and distribution here in the other years other than during this strike period?

MS. WOOD: Objection.

A. Other sizes other than --

Q. Yes.

A. -- and other types other than RHS?

Q. Correct.

A. There are some tires that are brought in for unique applications and vehicles that may have been imported, like I had mentioned earlier into the States, that have unique sizes and they are European vehicles and we will stock a few tires for replacement for those particular vehicles, so there's a small number of those tires that would come in on a regular basis.

Q. And can you help elaborate on that? I take it what you're saying is that there is some either European trucks or European buses or some other vehicles that may be marketed here in the States and so they have particular tire needs and you would bring some of these tires in to stock them?

A. Somebody requested, looks like you don't have the size domestically, can you see if you could source because we have this market need, so we kind of go through the process of saying which customer is it, how big is the market, then we can get our technical group to kind of look at the specification of the product and say is it

the subject tire at issue in A.

Q. All right.

A. Yes.

Q. But on --

A. Other tires?

Q. Yes, other tires.

A. Some other tires have been sold in North Carolina.

Q. Okay.

A. Again, it's of a minuscule number.

Q. Do you know how many tires were sold in North Carolina, did you determine that number?

MS. WOOD: Objection.

A. Yes.

Q. Okay. And how many were there sold in North Carolina?

A. 1,847 from 2004 through 2007 August. And of those about a thousand were basically nonstrike related type product and 800 or so were normally just that which would have been brought in for the strike. That's out of 24 million truck tires in 2006 and upwards to 26 million, depending on the market, so --

Q. Okay.

A. -- that's over a four year period again.

Q. All right. And did you determine when you conducted that search out of what facility these 1,847 tires were manufactured, in other words, which of

those manufacturing locations in Europe they were made at?

A. Turkey.

Q. Were they all made in Turkey?

A. Uh-huh, yes.

Q. Just purposes of this deposition, Turkey would be Goodyear Lastikleri T.A.S., is that correct, that that's the Turkey manufacturing facility?

A. That's correct.

Q. Okay.

A. That was the source of the tires, production source.

Q. And just so I have this correct on the record, did all 1,847 that you determined were sold in North Carolina between 2004 and 2007, that is August 2007, they were all made at the Goodyear Lastikleri T.A.S. plant facility?

A. That's correct.

Q. Okay. Now, other than these Goodyear Regional tires that we talked about for the different kinds of applications, that is a nonbus application, but low boys, trailers, are you

through the Goodyear distribution, internal distribution or were they sold through independent?

MS. WOOD: Objection.

A. Well, Goodyear would have brought them in --

Q. Okay.

A. -- and then they would have been sold through the independent dealers.

Q. Okay. And obviously in our discussion those tires were manufactured by Goodyear Lastikleri T.A.S., who would actually import them into the US, would Goodyear Lastikleri ship them into the States?

MS. WOOD: Objection.

A. Well, first of all, the plant at Turkey doesn't control any distribution.

Q. Okay.

A. They just manufacture the tire.

Q. Got you.

A. They don't interface with any of the other pieces. Their job is to be given a forecast or a ticket and then they just build widgets.

Q. Okay.

A. And then someone then decides how those widgets then get distributed to customers and to warehouses, all independent, so that enterprise really they just make widgets. That's all they do.

Q. They manufacture the tire?

A. Yeah.

Q. Okay. And are you aware of who would be the importing entity that would bring the tire into the US?

MS. WOOD: Objection.

A. Well, not specifically. We use a international, you know, because it goes through freight forwarding, through customs and, you know, there are different billing enterprises, but you know.

Q. Would Goodyear, Akron that is the Goodyear Tire & Rubber Company, would the Akron entity of Goodyear be the company that made the

determination that we need to import these tires for sale in the US?

A. Not necessarily.

MS. WOOD: Objection.

Q. Okay.

A. The independent business unit would, again, be the one where the requirement resides and they would put in a formalized request through the chain and it would say, okay, we don't make the

MS. WOOD: Objection.

A. Well, one, they don't send tires into the United States for distribution. We make that determination in this country.

Q. Right.

A. So they would never directly - -

Q. I understand.

A. -- through their chain kind of send tires in. They would -- it would be emanating from a request that we would make for a requirement for something that we do not have a vehicle or, you know, domestic source for, and then we would then let Europe then decide how, but they would not deal directly with customers or bring tires into the United States without our approval or sanction.

Q. The originating request comes from Goodyear US to these --

A. Right, right.

Q. -- either your subsidiary corporations or related companies?

A. Right.

Q. Okay. Thank you. I think I understand.

Now, other than what you have shared with me today, did you make any additional investigation

No. COA 08-944 Four-B DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS,

Plaintiffs,

v.

ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA.,

Defendants.

From Onslow County
05 CvS 1992

****

BRIEF OF PLAINTIFFS-APPELLEES

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No. COA 08-944 Four-B DISTRICT

NORTH CAROLINA COURT OF APPEALS

****

EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS,

Plaintiffs, v. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA., Defendants.	From Onslow County 05 CvS 1992

****

BRIEF OF PLAINTIFFS-APPELLEES

****

STATEMENT OF THE FACTS AND OF THE CASE

This is a wrongful death case involving two 13-year-old boys, Matthew Helms of Jacksonville and Julian Brown of Charlotte, youth soccer players who were killed in a bus wreck near Paris, France. The trip to France was arranged by the N.C. Youth Soccer Association for players considered the best under age 14 youth soccer players in the state. (R p. 61). The complaint alleges that on April 18, 2004, as they were on a bus headed to the airport in Paris to return

home, one of the bus' Goodyear tires failed when its plies separated. (R p. 66). The bus driver lost control of the bus and it overturned, killing both boys. (R p. 65).

The initial suit named the company that arranged the trip, among others, as defendants. Plaintiffs later learned, during a French criminal negligent homicide investigation conducted after the accident, that one of the bus tires was noted to be defective and a cause of the wreck. Plaintiffs amended their complaint, filing suit in Onslow County against several defendants, including Goodyear Tire & Rubber Co. and its subsidiary foreign corporations that plaintiffs alleged designed, manufactured and distributed the tire for sale in France, and in the United States. (R p. 58). Plaintiffs alleged that the tire was defectively manufactured and designed, and that it breached express and implied warranties. (R p. 77-87) .

The five Goodyear foreign defendants filed motions to dismiss for lack of personal jurisdiction, alleging that each of the foreign Goodyear corporations lacked the requisite minimum contacts and could not reasonably anticipate being haled into court in North Carolina. (R p. 93-130), Plaintiffs opposed those motions. Following a hearing, the court took its ruling under advisement, and plaintiffs conducted further discovery to clarify the issues. That discovery showed that two of the five foreign Goodyear companies lacked the necessary minimum contacts for jurisdiction, and plaintiffs filed voluntary dismissals as to those companies. (R p. 174). The remaining three companies are Goodyear Lastikleri T.A.S., the Turkish company that manufactured the

tire, Goodyear Dunlop Tires France SA and Goodyear Luxembourg Tires SA. (Hereinafter "the Goodyear foreign defendants,") The three companies designed, manufactured and distributed the defective tire. (R p. 77-78). Goodyear, which previously stated in affidavits that the companies did not do business in North Carolina, then admitted in discovery that the companies shipped 44,000 tires for sale into North Carolina in the past three years. (R pp. 165-167). The trial court found that the Goodyear foreign defendants had sufficient contacts with North Carolina to be subject to personal jurisdiction here. (R pp. 177-83). From that order, defendants appealed. (R p. 185).

I. DEFENDANTS HAVE A DIFFICULT BURDEN IN OVERCOMING THE STANDARD OF REVIEW WHERE THE JUDGE, AS TRIER OF FACT, REJECTED MUCH OF THEIR EVIDENCE.

The issue before the trial court was one of personal jurisdiction in which both sides presented evidence, including affidavits, photographs and deposition testimony. (R pp. 105, 119, 124, 141, 165). The trial court, therefore, was required to act as fact finder, determining the credibility of the evidence presented to it.

The court found the necessary facts to establish personal jurisdiction in this case, and the defendants have a high burden to try to overcome the trial court's determination. (R p. 177).

> "[T]he standard of review of an order determining personal jurisdiction is whether the findings of fact by the trial court are supported by competent evidence

> in the record; if so, this Court must affirm the order of the trial court." Replacements, Ltd. v. MidweSterling, 133 N.C. App. 139, 140-41, 515 S.E.2d 46, 48 (1999). "The determination of whether jurisdiction is statutorily and constitutionally permissible due to contact with the forum is a question of fact." *Hiwassee Stables, Inc. v. Cunningham*, 135 N.C. App. 24, 27, 519 S.E.2d 317, 320 (1999).

Cooper v. Shealy, 140 N.C. App. 729, 732, 537 S.E.2d 854, 856 (2000) .

The trial court, as fact finder in personal jurisdiction cases, is permitted to make judgments regarding the credibility of the evidence and of the witnesses, and those judgments cannot be disturbed on appeal. See *Deer Corp. v. Carter*, 117 N.C. App. 314, 629 S.E.2d 159 (2006) (where it appeared the trial court believed one party over another witness regarding jurisdictional evidence, the Court of Appeals is "not free to revisit questions of credibility or weight that have already been decided by the trial court." *Id.* at 324, 629 S.E.2d 267, citing *Banc of America Securities LLC v. Evergreen Intern*, 169 N.C. App. 690, 695, 611 S.E.2d 179, 183 (2005)).

a. Defendants Have Misplaced Their Reliance On Evidence From Their Affidavits and a 30(b)(6) Deposition, Which The Trial Court, As Finder Of Fact, Was Free To Reject When Defendants Repeatedly Failed To Be Candid With The Court.

The Goodyear foreign defendants argue that their evidence, in the form of affidavits and a 30(b) (6) deposition taken by plaintiffs, demonstrates that they

lack the necessary minimum contacts for jurisdiction. Defendants claim that their affidavits "conclusively establish that none of the Defendants conducts business in North Carolina." (Def. brief p. 6).

Their conclusion is unsound. The trial court, in making decisions regarding issues of credibility and weight, rejected evidence from the foreign Goodyear defendants after their affidavits were shown to be - at best - less than candid with the court.

In their appeal, defendants rely heavily on affidavits from executives from the defendant companies and the deposition of Donn Kramer, who was designated to respond to plaintiffs' 30(b) (6) notice to defendant The Goodyear Tire & Rubber Company.

In considering the issue of personal jurisdiction, the Court held two summary judgment hearings. The first hearing was held June 11, 2007. Before that initial summary judgment hearing, Goodyear presented the court with five affidavits from officials for the five Goodyear foreign defendants, all denying that they had any contact with North Carolina. (R pp. 97, 105, 112, 120, 133). After further discovery, plaintiffs found no evidence to refute two of those affidavits, and so took voluntary dismissals as to those defendants. The three other affidavits from the remaining defendants are noteworthy, however, for their lack of candor and full disclosure to the tribunal:

Goodyear Dunlop Tires France SA. This company stated in its affidavit that it "has no contacts whatsoever with the State of North Carolina," and "does not currently conduct any business in North Carolina, nor has it ever conducted

any business in North Carolina." (R p. 134). Months later, after additional discovery, Goodyear admitted that at least 33,923 tires made by Goodyear Dunlop Tires France SA were shipped into North Carolina for sale in the three years before suit was filed.

Goodyear Lastikleri T.A.S.: This affidavit states that the company - which manufactured the actual tire at issue – "has not shipped its products, or any materials or things processed, serviced or manufactured by Goodyear Lastikleri T.A.S. into North Carolina;" "does not currently conduct any business in North Carolina, nor has it conducted any business in North Carolina;" and "has not actively sold products in North Carolina." (R p. 120).

Subsequent discovery, discussed *infra*, shows that instead of its claims that it does not conduct any business in North Carolina, at least 5,906 of its tires have been sent to North Carolina for sale in three years.

Goodyear Luxembourg Tires SA. The affidavit on behalf of this company stated that it "has not sold products in North Carolina;" and "has not shipped its products or any materials or things processed serviced or manufactured by Goodyear Luxembourg Tires SA, directly to third parties in North Carolina." (R p. 106) . Discovery now shows that at least 6,402 of its tires were sent to North Carolina for sale around the time the suit was filed.

Evidence about the actual number of tires shipped into North Carolina for sale came only after:

a. Goodyear produced affidavits that were artfully drafted by executives with the three defendant companies.

b. Plaintiffs noticed a 30(b) (6) deposition of Goodyear (in the U.S.) to clarify whether these companies actually conducted business in North Carolina. (R p. 146).

c. The defendants filed a motion for a protective order, attempting to block the 30(b) (6) deposition that would reveal whether the foreign companies actually did business in North Carolina. (R p. 150).

d. The Honorable Edwin G. Wilson Jr. heard arguments and denied defendants' motions for a protective order, requiring them to make available a 30(b) (6) witness to answer the plaintiffs' questions regarding the quantity of goods the foreign corporations sold in North Carolina. (R p. 161)

e. After plaintiffs flew to Akron, Ohio, for the deposition, defendants produced a 30(b) (6) witness who had absolutely no information about four of the five companies at issue, and only a fraction of the information needed about the fifth, in direct contravention of Judge Wilson's order. R. p. 147-48, 161. For example, there was this exchange during the deposition about one of the companies:

> Q. Now let me go to the next companies called Goodyear Dunlop Tires Europe B.V.; are you familiar with that particular Goodyear entity?
>
> A. No.
>
> Q. Okay. Do you know anything about whether they ship tires into the United States or have shipped tires into the United States in the past three years, did you make any inquiry -
>
> A. No.
>
> Q. -- about that?

A. No.

Q. So I take it you're not able to answer any questions about whether that particular Goodyear company has shipped tires into the united States or into North Carolina for sale in the past three years, you're not able to answer those questions?

A. No.

Dep. Kramer, pp. 48-49.

This testimony came despite the fact that the notice of deposition and Judge Wilson's order specifically required a 30(b)(6) witness with knowledge of this information. (R pp. 161, 146) .

f. Only after plaintiffs complained about the witness' lack of information, noticed another 30(b) (6) deposition of Goodyear, and considered seeking sanctions against Goodyear for failure to provide discovery did Goodyear finally produce an affidavit admitting that in all, these three foreign companies that claimed they did no business in North Carolina, had manufactured more than 44,000 tires sent into North Carolina for sale within the past three years.

In his findings of fact, the trial judge had to weigh the testimony, affidavits and other evidence. The Court is not required to blindly rely on a Goodyear executive from France stating under oath that his company "does not currently conduct any business in North Carolina, nor has it ever conducted any business in North Carolina." (R p. 134). Instead, the trial court was entitled to make judgments regarding credibility after receiving an additional affidavit from Goodyear admitting that Goodyear

shipped 33,923 tires made by Goodyear Dunlop Tires France SA alone into North Carolina for sale.

Further, the trial court found as a fact that Goodyear's estimate of more than 44,000 tires shipped into North Carolina from these foreign defendants may have significantly underestimated the actual number of tires from these foreign companies coming into North Carolina for sale. In doing so, the court expressed its frustration that the Goodyear defendant failed to properly respond to the court's order for a 30(b) (6) deposition. Finding of Fact No. 9 states:

> The number of tires shipped into North Carolina from each of these manufacturers may actually be substantially higher, in that The Goodyear Tire and Rubber Company (hereinafter "Goodyear") , after being noticed for a 30 (b) (6) deposition, failed - to determine how many vehicles equipped with tires from these foreign defendant manufacturers are imported into the U.S. and shipped into North Carolina for sale each year.

(R p. 179).

Defendants' claims that they are beyond the jurisdiction of North Carolina courts are grounded in the evidence they provided that was ultimately rejected by the court as not credible. This court cannot substitute its judgment for the finder of fact. The trial court's findings of fact are within the purview of the fact finder, are based on credible evidence, including the defendants' own admissions, and therefore should not to be disturbed on review.

II. JURISDICTION IS PROPER UNDER NORTH CAROLINA'S LONG ARM STATUTE, N.C.G.S. § 1-75.4, WHERE THE DEFENDANTS ARE ENGAGED IN SUBSTANTIAL ACTIVITY HERE.

a. The State's long arm statute authorizes jurisdiction in this case.

North Carolina courts have stated that there is a two-step process for determining whether personal jurisdiction exists. The first question is whether there is jurisdiction under the North Carolina long-arm statute, N.C. Gen. Stat. § 1-75.4. The second issue is whether the exercise of jurisdiction over the defendant comports with constitutional standards of due process. *Charter Medical v. Zigmed*, 173 N.C. App. 213, 216, 617 S.E.2d 352, 354 (2005).

Plaintiffs contend that they are entitled to assert personal jurisdiction under the long-arm statute under §1-75.4(1)(d), which states that personal jurisdiction is proper:

> In any action, whether the claim arises within or without this state, in which a claim is asserted against a party who when service of process is made upon such party:
>
> * * *
>
> d. Is engaged in substantial activity within this State, whether such activity is wholly interstate, intrastate or otherwise.

This statute is to be "liberally construed by our courts to find personal jurisdiction over nonresident defendants to the full extent allowed by the due process standards of the Fourteenth Amendment."

Fraser v. Littlejohn, 96 N.C. App. 377, 382, 386 S.E.2d 230, 234 (1989).

"Our long-arm statute is designed to confer jurisdiction over nonresident defendants to the fullest extent possible under the due process clause of the Fourteenth Amendment." i, 118 N.C. App. 516, 522, 456 S.E.2d

121, 125 (1995).

The North Carolina long arm statute specifically authorizes jurisdiction over the defendant companies. It states that a court in North Carolina has jurisdiction over a defendant "whether the claim arises within or without this state," when a person "is engaged in substantial activity within this State, whether such activity is wholly interstate, intrastate, or otherwise." N.C. Gen. Stat. § 1-75.4 (1) (d).

Defendants' 30(b) (6) witness testified that the Turkish manufacturer imports tires into North Carolina "on a regular basis" (dep. Kramer p. 12); that the foreign Goodyear companies regularly provide replacement tires for European vehicles driven here (*Id.*); and that more than 44,000 tires have been shipped to North Carolina for sale in over a 3-year period. (R p. 166).

The trial court specifically found as a fact that the companies were engaged in substantial activity in North Carolina. The court found:

> 14. The defendants purposefully and deliberately availed themselves of the North Carolina market for tires and substantially profited from sales of their tires in North Carolina.

> 15. The defendant companies have continuous and systematic contacts with North Carolina and are conducting substantial activitv within North Carolina.

(R p. 180, emphasis added) .

All three of these defendant companies reach the substantial activity threshold, as they send thousands of tires a year into the State, on a continuous and systematic basis, in an attempt to profit from sales to North Carolina consumers. The court correctly found that jurisdiction was appropriate under the long arm statute.

III. DEFENDANTS HAVE SUFFICIENT TIES WITH NORTH CAROLINA THAT AN EXERCISE OF PERSONAL JURISDICTION OVER THEM COMPORTS WITH DUE PROCESS AND THE COMPANIES COULD REASONABLY ANTICIPATE BEING HALED INTO COURT HERE.

a. Plaintiffs are attempting to assert general jurisdiction over the defendants.

Once the long-armed statute has been met, plaintiff must show that the exercise of jurisdiction over the defendants is consistent with Due Process. "To satisfy the due process prong of the personal jurisdiction analysis, there must be sufficient 'minimum contacts' between the nonresident defendant and our state 'such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.' " *Skinner v Preferred Credit*, 361 N.C. 114, 122, 638 S.E.2d 203, 210 (2006)

(quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95, 102 (1945)).

The "relationship between the defendant and the forum must be 'such that he should reasonably anticipate being haled into court there.'" *Tom Togs, Inc. v. Ben Elias Industries Corp.*, 318 N.C. 361, 365, 348 S.E.2d 782, 786 (1986) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490, 501 (1980)).

The U.S. Supreme Court has recognized two bases for finding sufficient minimum contacts: (1) specific jurisdiction and (2) general jurisdiction. *Wells Fargo Bank, N.A. v. Affiliated FM Ins. Co.*, -- S.E. 2d ---, 2008 WL 4468079 (N.C. App., 2008). Specific jurisdiction exists when the actual controversy arises out of the defendant's contact with the forum state. General jurisdiction may be asserted over a defendant when the cause of action is unrelated to defendant's activities in the forum "as long as there are sufficient 'continuous and systematic' contacts between defendant and the forum state." *Replacements, Ltd. v. MidweSterling*, 133 N.C. App. 139, 145, 515 S.E.2d at 51 (1999) (quoting *Fraser v. Littlejohn*, 96 N.C. App. 377, 383, 386 S.E.2d 230, 234 (1989)).

Because plaintiffs' contentions regarding minimum contacts do not directly relate to the event giving rise to the cause of action, plaintiffs allege that general jurisdiction may be asserted over the defendants because of their 'continuous and systematic' contacts between the defendants and North Carolina.

b. Plaintiffs have met the five-part test to show general jurisdiction.

North Carolina courts have adopted a 5-part test to determine when general jurisdiction may be exercised over a defendant.

"Minimum contacts are not determined by applying a mechanical formula; rather, each case is judged on its particular facts considering the traditional notions of fair play and justice. *Ciba-Geigy Corp. v. Barnett*, 76 N.C. App. 605, 334 S.E.2d 91 (1985). The factors to be considered are: (1) the quantity of the contacts, (2) the nature and quality of the contacts, (3) the source and connection of the cause of action to the contacts, (4) the interest of the forum state, and (5) convenience." *Fraser v. Littlejohn*, 96 N.C. App. 377, 383, 386 S.E.2d 230, 234 (1989).

Plaintiffs believe that all five of these factors weigh in the favor of the plaintiffs, and that "traditional notions of fair play and justice" compel a finding that this court should exercise jurisdiction.

Taking these factors in turn:

a. Quantity of the contacts. The three foreign Goodyear defendants have admitted that some 44,000 tires they have manufactured or designed have been sent to this state for sale. (Goodyear Laskilieri, 5,906 tires; Goodyear Luxembourg Tires SA, 6,402 tires; Goodyear Dunlop Tires France SA, 33,923 tires). Those tires "come in on a regular basis," according to Goodyear's 30(b) (6) designee. (Dep. Kramer, p. 21).

North Carolina courts have found jurisdiction when there is only a fraction of the sales in this case. For example, in *Dillon v. Numismatic Funding Corp.*, 291 N.C. 674, 231 S.E.2d 626 (1977), the court found

sufficient contacts for general jurisdiction with sales to only 27 North Carolinians.

In *Hankins v. Somers*, 39 N.C. App. 617, 251 S.E.2d 640 (1979), the court found that evidence of sales of wire art products in North Carolina to "a substantial extent" was sufficient to demonstrate general jurisdiction.

b. The nature and quality of the contacts. In this case, the contacts are not fleeting, such as mere phone calls into the state, or advertisements in national publications that happen to reach North Carolina. Instead, defendants are attempting to sell as many tires as possible in North Carolina. Defendants purposefully and intentionally send tires from their subsidiary foreign manufacturers, importing them into the United States and selling them in the North Carolina market.

Goodyear's 30(b) (6) witness, Donn Kramer, described this tightly controlled relationship in his deposition.

> Q. [S]o that I'll understand, the tires that did get shipped into the United States from Goodyear Lastikleri T.A.S., were those tires shipped solely through Goodyear chain or were those tires sold to independent dealers from Europe, for example?
>
> A. Well, for our involvement they would never go through another independent dealer. We would handle it through our own internal distribution.

Kramer dep. pp. 35.

Later he talked about the plant in Turkey that manufactured the tire at issue – defendant Goodyear Lastikleri T.A.S. – and how Goodyear distributes tires:

> A. Well, first of all, the plant at Turkey doesn't control any distribution.
>
> Q. Okay.
>
> A. They just manufacture the tire.
>
> Q. Got you.
>
> A. They don't interface with any of the other pieces. Their job is to be given a forecast or a ticket and then they just build widgets.
>
> Q. Okay.
>
> A. And then someone then decides how those widgets then get distributed to customers and to warehouses, all independent, so that enterprise, really they just make widgets. That's all they do.
>
> Q. They manufacture the tire?
>
> A. Yeah.

(Kramer dep. pp. 36-37).

Goodyear sells tires from these defendants in North Carolina on a continuing basis, through a highly integrated structure, and is doing so today. In selling its tires here, a defendant "avails himself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws." *Tom Togs, Inc. v. Ben Elias Industries Corp.*, 318 N.C. 361, 365, 348 S.E.2d 782, 786 (1986). That relationship, in and of itself, is enough for the court to find jurisdiction.

Defendants' contacts with the state are both continuous and systematic. They do business here by repeatedly selling thousands of tires within our state. Those sales are admitted to have taken place on a regular basis over the past three years.

The trial court found as a fact that the companies had "continuous and systematic contacts with North Carolina" and that they were "conducting substantial activity within North Carolina." (R p. 180).

"The defendants purposefully and deliberately availed themselves of the North Carolina market for tires and substantially profited from sales of their tires in North Carolina," the Court found. *Id.*

The nature and quality of those contacts was found to be deliberate and substantial, in that the companies purposefully targeted the North Carolina market, selling thousands of tires here on a continuing basis.

The nature and quality of the contacts with North Carolina, supports a finding of general jurisdiction.

c. The source and connection of the cause of action to the contacts. General jurisdiction permits the exercise of jurisdiction over a defendant even when the cause of action is completely unrelated to the source of the contacts. In this case, however, there is a significant nexus between the contacts with North Carolina and the cause of action. The defendants' contacts with North Carolina consist of thousands of tires they manufactured being shipped to North Carolina and sold to its residents, generating hundreds of thousands of dollars in revenue. Thousands of the defendants' tires are being

used on thousands of vehicles today in North Carolina.

It is foreseeable to those defendants that one or more of their tires might fail, injuring a North Carolina resident, and the defendants might have to defend a lawsuit here. Jurisdiction would be beyond question in that case.

The U.S. Supreme Court held in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559 (1980), that a manufacturer or distributor who places an item in the "stream of commerce," even indirectly, attempting to serve a market, it is subject to suit in that market.

> If the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

World-Wide Volkswagen at 297-98, 100 S.Ct. at 567.

Overall, the test is this: whether "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate

being haled into court there." World-Wide Volkswagen at 297, 100 S.Ct. at 567.

In addition, the very tire involved in this case, although sold in France, was designed and manufactured by the defendants so that it could be sold in the United States.

Robert C. Ochs is an registered professional engineer with 25 years of experience working in the tire industry, including the European tire industry. He worked for Michelin Tire in France in a number of positions, including Director of Product Analysis. Mr. Ochs traveled to France and personally examined the tire involved in this wreck. (R p. 142). He stated in his affidavit that the tire involved in this wreck was designed, manufactured and marketed for sale worldwide, including sale in the United States and North Carolina. (R p. 143).

He noted that the information on the tire was written entirely in English and it contained a serial number required by the U.S. Department of Transportation for tires sold in the United States. (R p. 143). The tire contained additional U.S. Department of Transportation markings that were placed there to allow the tire to be sold in the United States. (*Id.*).

Markings on the tire at issue contained information showing that it was manufactured as qualified for sale in the United States, Mr. Ochs stated. (*Id.*) The tire also has a U.S. code listing load and pressure ratings that conform to United States standards set by the Tire and Rim Association, the standardizing organization for the tire industry in the United States. (*Id.*) It contains a "Safety Warning," written in English, that conforms to the

warnings found on every tire for sale in the United States. The tire was manufactured and labeled in such a way as to allow it to be sold in the United States, including North Carolina, he concluded. (*Id.*)

Not only could the defendants reasonably anticipate being haled into court in North Carolina for the sale of one of their tires - they could have been haled into court in North Carolina for the sale of this very tire, were it not for a happenstance of distribution which sent the tire to France instead of North Carolina. Therefore the source and connection of the cause of action to the contacts is very strong.

d. Interest of the forum state. Protection of children is part of the public policy of our state. In this case, two 13-year-old North Carolina residents were killed when a tire manufactured by defendants failed, causing the bus they were riding in to crash. North Carolina has an interest in protecting its citizens - especially its minor citizens who cannot protect themselves - and allowing them a forum for the redress of grievances. As the N.C. Supreme Court has stated: "It is generally conceded that a state has a 'manifest interest' in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors." Tom Togs, Inc. v. Ben Elias Industries Corp., 318 N.C. 361, 367, 348 S.E.2d 782, 787 (1986).

e. Convenience. The court found as a fact that the Goodyear defendants would not be inconvenienced by the trial of this action in North Carolina because they do "substantial and continuous business in North Carolina." (R p. 182).

The manufacturer of the tire, Goodyear Lastikleri T.A.S., is a wholly owned subsidiary and

the other defendants are operating subsidiaries of a multi-national, multi-billion dollar Goodyear corporation that is based in the United States and directed by a board of directors located in the united States. They necessarily have ongoing and repeated contacts with the U.S., which directs the companies on a world-wide basis. For example, their 30(b) (6) witness testified that the U.S. directs the Turkish manufacturing company as to how many of each tire to make so it can best meet the market for tires around the world.

More importantly, the specific foreign Goodyear corporations have ongoing and continuous commercial contacts with the forum state. If it is convenient for them to market and sell their goods in North Carolina, surely it should not be unduly burdensome to appear in our courts.

The defendants had no trouble securing lawyers in the U.S. to defend their interests - in fact, the same lawyers and law firm represent the U.S.-based Goodyear Tire & Rubber Co. and the foreign Goodyear companies. Any inconvenience to defendants so used to working in the United States is minor.

By contrast, the expense and inconvenience to these families of attempting to litigate wrongful death claims for their sons in a foreign legal system, thousands of miles away, with obvious language barriers, would be overwhelming and prohibitive. It would much more inconvenient for the boys' parents to litigate in Europe than for these multi-national companies to litigate in North Carolina.

In sum, all of the five factors our courts have said should be weighed in claims of general jurisdiction favor the plaintiffs.

IV. DEFENDANTS' "STREAM OF COMMERCE" ARGUMENTS ARE MISDIRECTED IN THAT THEY REFER TO A DOCTRINE THAT DOES NOT APPLY IN THIS CASE.

Defendants argue that products placed in the "stream of commerce" cannot satisfy the minimum contacts requirement when plaintiffs seek to assert general jurisdiction over a defendant.

This argument is misguided for two reasons: First, defendants apparently misunderstand the plaintiff's evidence about the nature of the method by which the tires were distributed and sold in North Carolina. Second, the cases defendants cite do not stand for the propositions defendants have put forward.

a. Goodyear's factual testimony about its distribution scheme shows that its companies are part of a world-wide delivery plan that includes North Carolina.

Defendants portray themselves as isolated mom and pop businesses in far off countries that happen to sell a product to a distributor who, without their knowledge, resells the product in the United States.

The evidence is far different, and the trial judge who weighed that evidence reached a far different conclusion.

First, it is important to look at Goodyear's distribution chain. Donn Kramer, Goodyear's 30(b) (6) witness, testified in his deposition about the Turkish manufacturer of the tire at issue, Goodyear Lastikleri T.A.S., and the Goodyear distribution chain. While he knew information only about the Turkish company at that time, in his affidavit provided to plaintiffs, he said the sourcing and distribution of the tires for all three companies is generally the same. (R p. 166).

Goodyear Lastikleri T.A.S. is a wholly owned subsidiary of the U.S. Goodyear company, the largest tire company in the world. Mr. Kramer testified that Goodyear Lastikleri manufactures tires at the behest of other Goodyear entities that determine how many tires are needed. Goodyear does an ongoing market analysis for its tires, determining where there is a market for particular types of tires. Once Goodyear sees a need in the United States – say specifically in North Carolina – for a particular type of tire, it determines which of its world-wide manufacturing plants makes that tire. It then "sources" the tire, telling the appropriate manufacturing plant, such as Goodyear Lastikleri in Turkey, to make and ship the tires. "Their job is to be given a forecast or a ticket and then they just build widgets," Mr. Kramer said of the Goodyear Lastikleri plant. (Kramer dep. p. 36) . The tires are sent to the United States "through our own internal distribution," Mr. Kramer testified. (Kramer dep. p. 35). Some of the tires are shipped to the U.S. directly from the foreign manufacturing plant, or they could be shipped first to a warehouse, then forwarded to the U.S., he said. (Kramer dep. p. 38). They are then sold to customers in North Carolina and other states, either at Goodyear brand

service centers, or at stores that stock tires from a variety of manufacturers.

Significantly, these defendants had no system for selling or distributing their tires. Instead, they simply manufactured the tires Goodyear told them to manufacture and then turned those tires over to Goodyear for export to any country or place where there was a market for the tires, including the United States and North Carolina. The tires were labeled in English, with U.S. Department of Transportation markings. The companies knew they were manufacturing products for sale to the United States.

The entire tenor of Mr. Kramer's testimony was that these wholly-owned subsidiary/ manufacturers are part of a highly integrated world-wide business that is based in the United States and which is designed to take advantage of every opening in the marketplace, selling tires throughout the world, including North Carolina.

The trial court's findings of fact reflect that it accepted this testimony, noting that the defendants' tires "continue to be sold to North Carolina residents on a continuous and systematic basis." (R p. 180).

The court further found as a fact:

> 11. The sale of these tires substantial revenue for Goodyear, these companies and its related companies. Generates defendant
>
> 12. The defendants, as manufacturers, did not have their own distribution system for the sale of their tires, but instead used their Goodyear parent and affiliated companies to distribute the tires they

manufactured to the United States and North Carolina.

13. The defendants knew or should have known that tires they manufactured were shipped to the United States through their Goodyear parent and affiliated companies and sold in North Carolina on a continuous and systematic basis.

14. The defendants purposefully and deliberately availed themselves of the North Carolina market for tires and Substantially profited from sales of their tires in North Carolina.

15. The defendant companies have continuous and systematic contacts with North Carolina and are conducting substantial activity within North Carolina.

16. Defendant Goodyear Lastikleri T.A.S. is a wholly owned subsidiary of defendant The Goodyear Tire and Rubber Company, which is based in the United states. All three of the foreign defendant companies are subsidiaries of Goodyear in the United States and as such have additional, abundant ties to the United States.

17. The defendant companies have deliberately attempted to take advantage of the tire market in North Carolina by designing, manufacturing and causing tires to be distributed for sale to the North Carolina market, and those tires are sold in North Carolina.

(R. p. 180-81) (emphasis added) .

Plaintiffs are not asserting there are minimum contacts with defendants on a "stream of commerce" claim, in which the defendants had nothing to do with where their product eventually ended up. Instead, plaintiffs are alleging that the defendants are part of a highly targeted, integrated world-wide effort to design, manufacture, market and sell their tires in the United States, including North Carolina. Those thousands of tires sold here are not incidental contacts, but instead are calculated and deliberate efforts to take advantage of the North Carolina market for tires.

b. The defendants misunderstand the "stream of commerce" theory, and plaintiffs are not using that theory to demonstrate general jurisdiction.

Defendants maintain that the stream of commerce theory of personal jurisdiction cannot be applied in cases asserting general jurisdiction, therefore plaintiffs' case fails. Defendants simply misunderstand the stream of commerce theory, and plaintiffs are not using this theory to demonstrate jurisdiction.

The stream of commerce theory holds that in cases of *specific* jurisdiction, simply introducing a product into the stream of commerce, and knowing it might end up in the forum state, without more, can satisfy due process concerns - as long as the injuries arise from that product coming into the forum state.

In *Cox v. Hozelock, Ltd.*, 105 N.C. App. 52, 411 S.E.2d 640 (1992), the N.C. Court of Appeals found personal jurisdiction over an English manufacturer when a North Carolina resident was injured by its product. The court said:

> In conformity with the trend of North Carolina case law, we uphold the stream of commerce doctrine and find it consistent with the federal Due Process Clause. We hold the sole act of a manufacturer's intentional injection of his product into the stream of commerce provides sufficient grounds for a forum state's exercise of personal jurisdiction over the foreign manufacturer defendant. Pursuant to the facts in this case, the North Carolina court may properly invoke personal jurisdiction over defendant.

Id. at 57-58, 411 S.E.2d at 644 (emphasis added).

There was a similar result in *Bush v. BASF Wyandotte Corp.*, 64 N.C. App. 42, 306 S.E.2d 562 (1983), when a plaintiff who was injured brought an action against two Swedish corporations that allegedly manufactured her washing machine. The defendants had virtually no ties to the United States, much less North Carolina, yet the court found there was jurisdiction.

"In light of the fact that defendant-appellees purposefully injected their product into the stream of commerce without any indication that it desired to limit the area of distribution of its product so as to exclude North Carolina, we hold that the courts of North Carolina may lawfully assert personal jurisdiction over defendant-appellees." *Id.* at 50, 306 S.E.2d at 568 (emphasis added).

The "stream of commerce" doctrine states that a manufacturer that injects a single item into the stream of commerce, without directing it at the forum state, but knowing it might reach the forum state,

may be sued in the forum state if the product injures someone there.

This is not the test plaintiffs are attempting to apply. Instead, our courts have stated that general jurisdiction may be asserted over a defendant when the cause of action is unrelated to defendant's activities in the forum "as long as there are sufficient 'continuous and systematic' contacts between defendant and the forum state." *Replacements, Ltd. v. MidweSterling*, 133 N.C. App. 139, 145, 515 S.E.2d 46, 51 (1999) (quoting *Fraser v. Littlejohn*, 96 N.C. App. 377, 383, 386 S.E.2d 230, 234 (1989)).

"There must be sufficient 'minimum contacts' between the nonresident defendant and our state 'such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *Skinner v. Preferred Credit*, 361 N.C. 114, 122, 638 S.E.2d 203, 210 (2006) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95, 102 (1945)).

Further, the "relationship between the defendant and the forum must be 'such that he should reasonably anticipate being haled into court there.'" *Tom Togs, Inc.*, 318 N.C. at 365, 348 S.E.2d at 786 (*quoting World-wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490, 501 (1980)) .

The minimum contacts may come in a variety of forms, including purposefully directed sales into the state. For example, in *Dillon v. Numismatic Funding Corp.*, 291 N.C. 674, 231 S.E. 626, the plaintiff, who had formerly lived in South Carolina, sought to sue a New York business in North Carolina for breach of an employment contract. The contract

had no connection to North Carolina, the plaintiff had simply moved here after living in South Carolina, so plaintiff was seeking general jurisdiction.

The court found that the New York company had sold coins worth $50,000 to 27 North Carolinians. That was enough to exercise general jurisdiction over the company, the court said.

"By these acts, it appears that the defendant has purposefully (availed) itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Id.* at 679, 231 S.E. at 632.

To give structure to these tests for general jurisdiction, our courts have adopted the five-part test, discussed *supra*.

Defendants cite *DP Environmental Services, v. Bertlesen*, 834 F.Supp. 162 (1993), as proof that the stream of commerce analysis does not apply if the tort occurs out of state. Again, the defendants misunderstand the stream of commerce doctrine. *DP Environmental Services* did not involve personal injuries, or really, any injury to the North Carolina plaintiff at all, but instead was a patent infringement case. The court therefore held that the stream of commerce analysis was inapplicable.

In *DP Environmental Services*, a North Carolina corporation sought a preemptive strike against the exclusive licensee of patents and its only customer, both of which were Michigan corporations, seeking a declaratory judgment that the North Carolina corporation was not infringing a patent. The court held that the Michigan corporation lacked minimum contacts, noting particularly that the defendant "sells its products exclusively in

Michigan." *Id.* at 166. Further there was no evidence that the defendant had a business relationship with anyone in North Carolina. *Id.*

The corporation was not shipping any goods into North Carolina - therefore the stream of commerce doctrine did not apply, causing the court to state: "The stream of commerce theory for asserting personal jurisdiction is inapplicable in a case such as this where the cause of action did not arise from the manufacturer's products in the forum state."

Defendants also cite *Regent Lighting Corp. v. American* Lighting Concept, 25 F. Supp.2d 705 (1997) for its irrelevant claim that general jurisdiction cases cannot use the stream of commerce theory.

The court in that case noted that a stream of commerce analysis was inappropriate: "The allegedly infringing product never entered North Carolina through the stream of commerce." *Id.* at 711.

These cases simply divert attention from the actual issues and have no relation to the plaintiff's ability to show the defendants are subject to general jurisdiction.

SUMMARY

This court should uphold the trial courts' decision to exercise personal jurisdiction over the foreign Goodyear defendants. The trial court found that the defendants purposefully availed themselves of the protections of the laws of North Carolina, and the benefits of commerce in our state, by manufacturing products that were to be sold in North Carolina through their parent corporation. Defendants have substantial ties to North Carolina, in all sending more than 44,000 tires into the state

for sale in the past three years. Those ties are continuous, ongoing and systematic, in that the companies' products are regularly sourced from the related Goodyear manufacturing plants and sent into our state for sale.

Plaintiffs have met the five-part test for general jurisdiction. The equities also fall in the plaintiffs' favor. Goodyear's subsidiaries will not be harmed by having to come into court in North Carolina to answer for a defective product they sold in France, since they sell other tires that reach North Carolina. But the families of the two boys who were killed would find it an enormous expense and inconvenience to try to litigate this case in France.

CONCLUSION

Plaintiffs respectfully request that the Court uphold the trial court's denial of defendants' motions for summary judgment for lack of personal jurisdiction.

This the 27th day of October, 2008.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing BRIEF OF PLAINTIFFS-APPELLEES was served on opposing counsel by depositing a copy in the U.S. mail addressed to the following:

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This the 27th day of October, 2008.

/s/ William B. Bvstrvnski
William B. Bystrynski

No. FOUR-B DISTRICT

SUPREME COURT OF NORTH CAROLINA

* *

EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS, Plaintiffs,	)	
v.	)	
ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA., Defendants.	)	From Onslow County No. 05 CVS 1922 COA08-944

****

NOTICE OF APPEAL
UNDER N.C. GEN. STAT. § 7A-30
and
PETITION FOR DISCRETIONARY REVIEW
UNDER N.C. GEN. STAT. § 7A-31 (c)

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No. FOUR-B DISTRICT

SUPREME COURT OF NORTH CAROLINA

* *

EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M. HELMS,	)	
Plaintiffs,	)	
v.	)	
ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA.,	)	From Onslow County No. 05 CVS 1922 COA08-944

Defendants.)

****

NOTICE OF APPEAL
UNDER N.C. GEN. STAT. § 7A-30
and
PETITION FOR DISCRETIONARY REVIEW
UNDER N.C. GEN. STAT. § 7A-31(c)

****

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Defendants Goodyear Luxembourg Tires SA ("Goodyear Luxembourg"), Goodyear Lastikleri T.A.S. ("Goodyear Turkey"), and Goodyear Dunlop Tires France SA ("Goodyear France") (collectively "Defendants") hereby appeal as of right to the Supreme Court of North Carolina, pursuant to N. C. Gen. Stat. § 7A-30 and Rule 14 (b) (2) of the North Carolina Rules of Appellate Procedure, from the 18 August 2009 decision of the North Carolina Court of Appeals (attached hereto) .

The Court of Appeals' decision involves a substantial constitutional question arising under the Fourteenth Amendment to the United States Constitution, which is as follows: Is a nonresident defendant with no contacts with the State of North Carolina subject to the exercise of general personal jurisdiction, consistent with the fundamental due process rights of the Fourteenth Amendment to the United States Constitution, in an action arising wholly outside of North Carolina solely because that defendant introduced unrelated products into the stream of commerce, which were eventually distributed into North Carolina by third parties?

This substantial constitutional question was timely raised and briefed in the Superior Court and the Court of Appeals and is set out in the record on appeal. R. at 101-02, 115-16, 129-30, 182, 193. It was erroneously determined by the Court of Appeals. Slip Op. at 28-29.

In the alternative, Defendants respectfully petition the Supreme Court of North Carolina, pursuant to N. C. Gen. Stat. § 7A-31(c) and Rule 15 of the North Carolina Rules of Appellate Procedure, to certify for discretionary review the 18 August 2009 decision of the Court of Appeals (attached hereto) on the grounds that the personal jurisdiction issue raised in this appeal has significant public interest and involves legal principles that are of major significance to the jurisprudence of the State.

STATEMENT OF THE FACTS AND CASE

This case arises out of a bus accident that occurred near Paris, France on 18 April 2004, which resulted in the deaths of Julian David Brown and Matthew M. Helms, two young soccer players who had traveled to France to play soccer with the North Carolina Youth Soccer Association. R. at 61-64. Plaintiffs allege that one of the tires on the bus "failed" during the course of the accident. R. at 65.

It is undisputed that the allegedly defective tire at issue in this case was manufactured by Goodyear Turkey in Turkey, was "placed into the stream of commerce by being sold in France, and was used in France on a bus licensed to operate in France." R. at 77, 82. The bus involved in the accident was owned by a French corporation and driven by a French driver. R. at 63, 77.

Defendants are foreign corporations organized and located in their respective countries that have never engaged in any activities in North Carolina. Defendants do not conduct or solicit business in North Carolina; they do not provide services or sell, manufacture, or design products in North Carolina; they do not advertise or promote their products in North Carolina; they have no place of business, employee, sales representative, property, or bank accounts in North Carolina; they have no registered agent in North Carolina; they have not entered contracts, paid taxes, or conducted meetings in North Carolina; and they have never been authorized or sought authorization to do business in North Carolina. R. at 106-07, 120-21, 134-35.

The only so-called "contact" identified by the Court of Appeals between Defendants and North Carolina is the fact that several thousand tires manufactured by each of Defendants eventually found their way into North Carolina markets between 2004 and 2007. Slip Op. at 26-27. However, as acknowledged by the Court of Appeals, Defendants did not cause these tires to be shipped into North Carolina, and Defendants were not directly responsible for the presence of these tires in North Carolina. Id. at 21-22. Rather, third parties other than Defendants were responsible for the presence of the tires in North Carolina. Id.

On 24 June 2005, Plaintiffs filed a wrongful death action against Eric R. Meter, French Soccer Network, European Soccer Network, and the North Carolina Youth Soccer Association, Inc. On 17 April 2006, Plaintiffs filed an Amended Complaint in which they named Defendants, Goodyear Tire & Rubber

Company, Goodyear Dunlop Tires Europe B.V., and Goodyear SA as Defendants in this action. R. at 58-88.

Defendants, Goodyear Dunlop Tires Europe B.V., and Goodyear SA filed motions to dismiss for lack of personal jurisdiction pursuant to Rule 12 (b) (2) of the North Carolina Rules of Civil Civil Procedure. R. at 93-136. However, Goodyear Tire & Rubber Company did not file a motion to dismiss for lack of personal jurisdiction and is not a party to this Appeal. Plaintiffs subsequently filed voluntary dismissals of Goodyear Dunlop Tires Europe B.V. and Goodyear SA. R. at 174.

On 1 May 2008, the Onslow County Superior Court entered an Order denying Defendants' Motion to Dismiss for Lack of Personal Jurisdiction. Defendants filed Notice of Appeal from the Order of the trial court on 12 May 2008. R. at 185-86. The Court of Appeals issued its published Opinion on 18 August 2009. The mandate of the Court of Appeals issued on 8 September 2009, and Defendants timely filed this Notice of Appeal and Petition for Discretionary Review on 22 September 2009.

Notwithstanding Defendants' lack of contacts with North Carolina, the Court of Appeals erroneously determined that Defendants are engaging in "substantial activity within this State" sufficient to establish personal jurisdiction, solely because tires manufactured by Defendants overseas, which have no relation to the bus accident in question, were placed in the stream of commerce and eventually shipped into North Carolina by third parties. However, for the reasons set forth below, such conclusion cannot be reconciled with well

established precedent defining the constitutional limitations of the exercise of general personal jurisdiction over a nonresident defendant.

REASONS WHY THIS APPEAL OF RIGHT IS PROPER AND WHY CERTIFICATION SHOULD ISSUE

The North Carolina Court of Appeals has single-handedly overturned decades of carefully crafted jurisprudence defining the constitutionally permissible boundaries of a forum state's exercise of personal jurisdiction over a nonresident defendant. According to the Court of Appeals, a foreign manufacturer with absolutely no contacts with North Carolina can nevertheless be haled into court in North Carolina under a theory of general personal jurisdiction in an action arising from alleged injuries to a North Carolina resident anywhere in the world solely because that foreign manufacturer placed unrelated products into the stream of commerce that were eventually distributed by third parties into North Carolina.

As such, the holding of the Court of Appeals defies firmly established constitutional prerequisites to personal jurisdiction such as "minimum contacts" and "purposeful availment," it misconstrues the "stream of commerce theory," and it sends North Carolina case law on the matter in a direction that is unsustainable and squarely at odds with the controlling decisions of the United States Supreme Court.

Defendants hereby respectfully appeal as of right pursuant to N.C. Gen. Stat. § 7A-30 and Rule 14(b) (2) of the North Carolina Rules of Appellate Procedure based upon a substantial constitutional

question that was timely raised in the trial Court and was squarely before the Court of Appeals, which addressed the due process issue raised herein throughout its decision and erroneously upheld the trial court's conclusion that "general personal jurisdiction over [Defendants] was appropriate pursuant to N.C. Gen. Stat. § 1-75.4(1) (d) and the due process clause." Slip Op. at 29.

In the alternative, Defendants respectfully petition the Supreme Court of North Carolina, pursuant to N. C. Gen. Stat. § 7A-31 (c) and Rule 15 of the North Carolina Rules of Appellate Procedure, to certify for discretionary review the 18 August 2009 decision of the Court of Appeals on the grounds that the personal jurisdiction issue raised in this appeal has significant public interest and involves legal principles that are of major significance to the jurisprudence of the State.

I. DEFENDANTS' APPEAL OF RIGHT SHOULD BE ALLOWED BECAUSE IT INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION.

The Court of Appeals' decision contravenes fundamental due process rights protected by the Fourteenth Amendment to the United States Constitution. As a preliminary matter, a brief review of the relevant law regarding personal jurisdiction is pertinent to the Court's assessment of the constitutional issue raised in this appeal.

A. Jurisdictional Analysis.

In order to establish personal jurisdiction, a court engages in a two-part analysis. The court must first determine whether N.C. Gen. Stat. § 1-75.4, North Carolina's "long-arm statute," confers jurisdiction over the nonresident defendant. If so,

the court must then determine whether the exercise of jurisdiction meets constitutional standards of due process under the Fourteenth Amendment to the United States Constitution. Skinner v. Preferred Credit, 361 N.C. 114, 119, 638 S.E.2d 203, 208 (2006); Slip Op. at 9. "When personal jurisdiction is alleged to exist pursuant to the long-arm statute, the question of statutory authority collapses into one inquiry-whether defendant has the minimum contacts necessary to meet the requirements of due process." Filmar Racing, Inc. v. Stewart, 141 N.C. App. 668, 671, 541 S.E.2d 733, 736 (2001) (internal citation omitted); Slip Op. at 9.

Generally speaking, there are two theories under which personal jurisdiction may be exercised in a manner consistent with the Due Process Clause: (1) Specific jurisdiction and (2) general jurisdiction. Specific jurisdiction exists when the cause of action arises out of and relates to a defendant's contacts with the forum state. Skinner, 361 N.C. at 122, 638 S.E.2d at 210 (citing Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 n.8, 104 S. Ct. 1868, 1872 n.8 (1984)); Slip Op. at 11. General jurisdiction, on the other hand, "exists when the defendant's contacts with the state are not related to the cause of action but the defendant's activities in the forum are sufficiently 'continuous and systematic.'" Skinner, 361 N.C. at 122, 638 S.E.2d at 210 (citing Helicopteros, 466 U.S. at 414-16, 104 S. Ct. at 1872-73); Slip Op. at 11. In the present case, the Court of Appeals expressly acknowledges that this is a general personal jurisdiction case. Slip Op. at 12.

To establish general personal jurisdiction over a nonresident defendant, the plaintiff must show that

the defendant's activities in the forum state are "continuous and systematic," which is a more demanding standard than is necessary for establishing specific jurisdiction. ALS Scan, Inc. v. Digital Serv. Consultants. Inc., 293 F.3d 707, 712 (4th Cir. 2002); Slip Op. at 12 ("The threshold level of minimum contacts sufficient to confer general jurisdiction is significantly higher than for specific jurisdiction." (quoting Woods Intern., Inc. v. McRov, 436 F. Supp. 2d 744, 748 (M.D.N.C. 2006).

Regardless of whether a court exercises specific or general jurisdiction, "the constitutional touchstone remains whether the defendant purposefully established 'minimum contacts' in the forum," Burger King v. Rudzewicz, 471 U.S. 462, 474, 105 S. Ct. 2174, 2183 (1985), "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe Co. v. Washington, 326 U. S. 310, 316 66 S. Ct. 154, 158 (1945) (quoting Milliken v. Mever, 311 U.S. 457, 463, 61 S. Ct. 339, 343 (1940)); Slip Op. at 11. Thus, for a court to properly exercise personal jurisdiction over a nonresident defendant, "it is . . . essential that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." Hanson v. Denckla, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240 (1958); see also Slip Op. p. 13.

B. The Court Of Appeals' Due Process Contravenes Fundamental Due Process Rights Protected By The Fourteenth Amendment To The United States Constitution.

To be clear, the jurisdictional issue in the present case involves general personal jurisdiction, not specific jurisdiction. Slip Op. at 12 ("[T]he issue raised in this case involves general rather than specific jurisdiction."). This important distinction is essential to the Court's constitutional analysis for reasons that are discussed below.

Although the United States Supreme Court has ruled that a forum state may exercise personal jurisdiction "over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State," World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297-98, 100 S. Ct. 559, 567 (1980), "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protection of its laws." Hanson, 357 U.S. at 253, 78 S. Ct. at 1239. As such, a "stream of commerce theory" of general personal jurisdiction cannot dispense with the constitutional requirement that a defendant in some way purposefully avail itself of forum law."[1]

[1] Many courts have appropriately adopted the bright line rule advanced by Defendants in the lower court that stream of commerce theory simply does not apply in the context of general jurisdiction. See, e.g. D'Jamoos ex rel. Estate of Weingeroff v. Pilatus Aircraft Ltd., 566 F.3d 94 (3d Cir. 2009) (refusing to "treat the stream-of-commerce theory as a source of general jurisdiction"); Purdue Research Found. v. Sanofi-Synthelabo, S.A., 338 F.3d 773, 788 (7th Cir. 2003) (holding that stream-of-commerce theory "is relevant only to the exercise of specific jurisdiction; it provides no basis for exercising general jurisdiction over a nonresident defendant"); Alpine View Co. Ltd. v. Atlas Copco AB, 205 F.3d 208, 216 (5th Cir. 2000) ("We have

In the present case, the Court of Appeals plainly omitted the purposeful availment requirement from its analysis when it erroneously concluded that general personal jurisdiction could be exercised over Defendants solely because Defendants had placed their product into the stream of commerce. It is worth reiterating that Plaintiffs' cause of action arises from a bus accident in France, not North Carolina, and is not related to Defendants' contacts with North Carolina. The allegedly defective tire that caused the automobile accident was manufactured in Turkey, not in North Carolina. Defendants took no affirmative action to cause tires they had manufactured to be shipped to North Carolina. Slip Op. at 21. Although several thousand tires manufactured by Defendants "eventually found their way into North Carolina markets," id. at 27, none were shipped by Defendants, who unquestionably "were not directly responsible for the

(continued...)

specifically rejected a party's reliance on the stream-of-commerce theory to support asserting general jurisdiction over a nonresident defendant."); Bearry v. Beech Aircraft Co., 818 F.2d 370, 375 (5th Cir. 1987) ("A conclusion that there is a stream of commerce ensures that the contact that caused harm in the forum occurred there through the defendant's conduct and not the plaintiff's unilateral activities; it does not ensure that defendant's relationship with the forum is continuous and systematic, such that it can be sued there for unrelated claims."); XL Specialty Ins. Co. v. Melexis GmbH, 2007 WL 3026683, at *3 (D.N.J. October 16, 2007) ("The stream of commerce theory has been developed for the purpose of asserting specific jurisdiction over a defendant, not general jurisdiction.").

presence in North Carolina of tires that they had manufactured." Id. at 22.

Thus, the only alleged connection between Defendants and North Carolina identified by the Court of Appeals in support of the exercise of general personal jurisdiction is the fact that tires manufactured by Defendants (wholly unrelated to Plaintiffs' cause of action) were placed in the stream of commerce and eventually shipped to North Carolina by third parties (for which Defendants were not responsible). Nevertheless, the Court of Appeals concluded that the stream of commerce between Defendants and North Carolina, standing alone, met the heightened threshold of minimum contacts necessary to confer constitutionally sufficient general personal jurisdiction.

The explanation for the Court of Appeals' flawed constitutional analysis is apparent: the Court of Appeals erroneously relied upon stream of Commerce theory culled from specific personal jurisdiction cases, where the injuries to the plaintiffs occurred in the forum state, to decide the instant general personal jurisdiction case, where the injury to Plaintiffs is altogether unrelated to any contacts between Defendants and North Carolina.

In this regard, Defendants direct the Court's attention to pages 14 through 19 of the Slip Opinion, in which the Court of Appeals discusses and incorrectly relies upon the following specific personal jurisdiction cases: Asahi Metal Ind. Co. v. Superior Court of California, 480 U.S. 102, 107 S. Ct. 1026 (1987) (tire valve assembly manufactured in Japan and sold in Taiwan to Taiwanese tube manufacturer which then distributed and sold the tubes in

California, where the accident occurred and the cause of action arose); Bush v. BASF Wyandotte Corp., 64 N.C. App. 41, 306 S.E.2d 562 (1983) (manufacturer sold washing machine to distributor, which sold the product in North Carolina, causing injury in North Carolina); Warzynski v. Empire Comfort Systems, Inc., 102 N.C. App. 222, 401 S.E.2d 801 (1991) (gas heater sold by foreign manufacturer to distributor, which sold heater to gas company in North Carolina, which in turn sold heater to North Carolina resident and installed the heater in North Carolina home, causing injury in North Carolina); Cox v. Hozelock, Ltd., 105 N.C. App. 52, 411 S.E.2d 640 (1992) (sprayer sold, purchased and used in North Carolina, causing injury in North Carolina); and Carswell Distrib. Co. v. U.S.A.'s Wild Thing, 122 N.C. App. 105, 468 S.E.2d 566, (1996) (California manufacturer shipped boats to plaintiff in North Carolina, and cause of action arose out of allegedly defective boats).

Here, although the Court of Appeals' stream of commerce analysis arguably might have sufficed to confer specific personal jurisdiction over Defendants if the bus accident giving rise to Plaintiffs' cause of action had occurred in North Carolina, the bus accident occurred in France, and Defendants had no contacts with North Carolina. Since Defendants have done nothing to purposefully avail themselves of the privilege of conducting business in North Carolina and the cause of action does not relate to any injury in North Carolina, the Court of Appeals' stream of commerce analysis falls far short of the heightened standards for establishing general personal jurisdiction.

Under these circumstances, the Court of Appeals' decision contravenes fundamental due process rights under the Fourteenth Amendment to the United States Constitution. Accordingly, Defendants respectfully appeal as of right pursuant to N.C. Gen. Stat. § 7A-30 and Rule 14 (b) (2) of the North Carolina Rules of Appellate Procedure based upon a substantial constitutional question.

II DEFENDANTS' PETITION FOR DISCRETIONARY REVIEW SHOULD BE ALLOWED BECAUSE THE SUBJECT MATTER OF THIS APPEAL HAS SIGNIFICANT PUBLIC INTEREST AND THE CAUSE INVOLVES LEGAL PRINCIPLES OF MAJOR SIGNIFICANCE TO THE JURISPRUDENCE OF THE STATE.

A. The Issue Of Personal Jurisdiction Raised In This Appeal Has Significant Public Interest Because The Decision Of The Court Of Appeals Will Have A Chilling Effect On Commerce.

The public interest in this case is compelling. It is well recognized that the concept of personal jurisdiction is at the heart of our judicial system. The North Carolina Court of Appeals' drastic expansion of the reach of North Carolina's long-arm statute in this case has far-reaching consequences for nonresident businesses whose products may reach North Carolina through the stream of commerce, a matter of significant public interest in today's global economy.

As frequently held by this Court, a party may be subject to personal jurisdiction in this State only if the exercise of such jurisdiction does not offend "traditional notions of fair play and substantial justice." Skinner, 361 N.C. at 122, 638 S.E.2d at 210 (quoting Int'l Shoe Co. v. Washington, 326 U.S. at

316, 66 S. Ct. at 158). However, according to the reasoning of the Court of Appeals in this case, any foreign business in the world whose product injures a North Carolina resident anywhere in the world is subject to general personal jurisdiction in North Carolina if its other products indirectly reached North Carolina through the stream of commerce via third parties, even where, as in the present case, that business has had absolutely no direct contact with North Carolina and did not take any affirmative action to purposefully cause its products to be shipped into North Carolina.

In the present case, none of Defendants has any contacts with North Carolina. Defendants do not conduct or solicit business in North Carolina; they do not provide services or sell, manufacture, or design products in North Carolina; they do not advertise or promote their products in North Carolina; they have no place of business, employee, sales representative, property, or bank accounts in North Carolina; they have no registered agent in North Carolina; they have not entered contracts, paid taxes, or conducted meetings in North Carolina; and they have never been authorized or sought authorization to do business in North Carolina. R. at 106-07, 120-21, 134-35.

Simply stated, the practical application of the Court of Appeals' Opinion is that a foreign manufacturer with no contacts with North Carolina may be sued in North Carolina if it places its product into the stream of commerce and some product eventually reaches North Carolina via a third party, even if the cause of action arose wholly outside of

North Carolina and is wholly unrelated to the product that reached North Carolina.

Remarkably, the Opinion of the Court of Appeals instructs that the only way in which foreign companies may protect themselves from this expansive assertion of general personal jurisdiction is by "indication that [they] desire to limit the area of distribution of [their] product so as to exclude North Carolina." Slip Op. at 28-29. However, the Court of Appeals provides no guidance whatsoever on how a foreign company might express such an "indication" and thereby protect itself from unknowingly exposing itself to general personal jurisdiction in the courts of North Carolina as the result of the downstream actions of some third party. While such a theoretical "indication" might be applicable in the context of specific jurisdiction, where the nonresident defendant's product entered North Carolina and caused injury in North Carolina, the Court of Appeals' directive makes little sense in the context of a general jurisdiction case such as this where the cause of action is unrelated to North Carolina and where the nonresident defendant, who has no contacts with North Carolina, places its product into the stream of commerce without directing such product to North Carolina.

Because of the uncertainty that the decision of the Court of Appeals creates for foreign companies, and its likely chilling effect on commerce, there is a significant public interest in having this Court clarify and resolve the ambiguities that the Court of Appeals has created in this most fundamental area of the law.

B. The Issue Of Personal Jurisdiction Raised In Appeal Involves Legal Principles Of Major

Significance To The Jurisprudence Of The State Because It Fundamentallv Alters The Wav In Which North Carolina Courts Mav Assert General Jurisdiction Over Nonresident Defendants.

The major significance of the legal principles involved in this appeal cannot be overstated. The Court of Appeals has fundamentally altered the way in which North Carolina courts may assert general jurisdiction over nonresident defendants. In its assessment of the law, the Court of Appeals recognizes the critical distinction between specific and general jurisdiction and the heightened threshold of minimum contacts necessary to confer general jurisdiction. However, in its application of the law to the facts of this case, after expressly stating that this case involves general jurisdiction, the Court of Appeals inexplicably shifts to a specific jurisdiction analysis that simply does not apply. The result is a decision that represents a complete departure from the long line of general personal jurisdiction cases decided by the North Carolina Court of Appeals and the North Carolina Supreme Court.

In contrast with specific jurisdiction cases, at the heart of general jurisdiction is the concept of "purposeful availment." As explained by the Court of Appeals in Fraser v. Littlejohn, in order for a defendant to be subject to general jurisdiction pursuant to N.C. Gen. Stat. § 1-75.4(1)(d), the defendant "must take some purposeful action within the forum state that invokes for defendant the benefits and protections of the forum state's laws." 96 N.C. App. 377, 386 S.E. 2d 230 (1989) (citations omitted).

The Court of Appeals effectively eviscerates the purposeful availment principle by holding that if a business did not take affirmative steps to prevent its product from entering the State, that business has "purposefully availed [itself] of the protection of the laws of this State." Slip Op. at 29. The fundamental unfairness of this holding is highlighted by the Court of Appeals' specific finding, as to Defendants lack of responsibility for the presence of tires in North Carolina, that:

> [T] he record appears to be devoid of evidence that Defendants took any affirmative action to cause tires which they had manufactured to be shipped into North Carolina. On the contrary, the available evidence tends to show that other entities were responsible for the shipment of tires manufactured by Defendants to the United States and, as a part of that process, the tires arrived in North Carolina. As a result, our analysis of the trial court's findings is informed by our understanding that Defendants, as separate corporate entities, were not directly responsible for the presence in North Carolina of tires that they had manufactured.

Slip Op. at 21-22.

Consider, for example, the consequences if the constitutionally unreasonable analysis of the Court of Appeals were to be applied by a court in another state against a North Carolina corporation: a North Carolina corporation manufactures boats, which it

sells to a third party boat distributor, who eventually sells the boats in Oregon and Portugal. The North Carolina boat manufacturer has no contacts outside of North Carolina and, more specifically, does not conduct any business in Oregon. A resident of Oregon is travelling in Portugal, where she is injured by an alleged defect in one of the North Carolina-manufactured boats. The Oregon resident subsequently files suit in Oregon against the Portuguese boat operator and the North Carolina boat manufacturer for the injuries she sustained in Portugal.

In this example, the faulty analysis of the Court of Appeals would dictate that the North Carolina boat manufacturer, which has absolutely no contacts with Oregon, would be subject to the general personal jurisdiction of an Oregon court in a lawsuit arising from injuries sustained by the Oregon resident in Portugal. According to the Court of Appeals, the only way for the North Carolina boat manufacturer to avoid being haled into Court in Oregon under such circumstances is for it to have foreseen the lawsuit in Oregon (where it does not conduct any business) and expressed an "indication" that it desired to limit the area of distribution of its boats so as to exclude Oregon.

In summary, the Opinion of the Court of Appeals turns the general jurisdiction requirement of purposeful availment on end – rather than focusing on the "critical factor" of whether Defendants purposefully availed themselves of the privilege of conducting activities within North Carolina, the Court of Appeals focused on whether Defendants took affirmative steps to exclude North Carolina from the

geographical distribution of their product in the United States. As such, the Court of Appeals has essentially held that a nonresident defendant which places its product into the stream of commerce and which has no contact with North Carolina must nonetheless purposefully "disavail" itself of the privilege of conducting activities within North Carolina in order to avoid being unfairly subjected to general personal jurisdiction.

ISSUE TO BE BRIEFED

In the event the Court allows Defendants' Notice of Appeal or, alternatively, allows Defendants' Petition for Discretionary Review, Defendants intend to present the following issue for review in its brief to the Court:

I. Is a nonresident defendant with no contacts with the State of North Carolina subject to the exercise of general personal jurisdiction, consistent with the fundamental due process rights of the Fourteenth Amendment to the United States Constitution, in an action arising wholly outside of North Carolina solely because that defendant introduced unrelated products into the stream of commerce, which were eventually distributed into North Carolina by third parties?

Respectfully submitted this the 22nd day of September, 2009.

BELL, DAVIS & PITT, P.A.

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Defendants' Notice of Appeal and Petition for Discretionary Review by depositing a copy hereof in a postpaid wrapper in a post office or official depository by first class mail under the exclusive care and custody of the United States Post Office department properly addressed to the following:

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This the 22nd day of September, 2009.

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No. 392P09 Four-B DISTRICT

SUPREME COURT OF NORTH CAROLINA

* *

EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M.HELMS, Plaintiffs, v. ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA., Defendants.	)	From Onslow County 05 CvS 1922 COA 08-944

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SUPREME COURT OF
NORTH CAROLINA

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PLAINTIFFS' RESPONSE TO
DEFENDANTS' NOTICE OF APPEAL UNDER N.C. GEN. STAT. § 7A-30
and to
DEFENDANTS' PETITION
FOR DISCRETIONARY REVIEW UNDER N.C. GEN. STAT. § 7A-31(c)

* * * * * * * * * * * * *

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No. 392P09 Four-B DISTRICT

SUPREME COURT OF NORTH CAROLINA

* *

EDGAR D. BROWN and PAMELA BROWN, Co-Administrators of the ESTATE OF JULIAN DAVID BROWN, and KAREN M. HELMS, Administratrix of the ESTATE OF MATTHEW M.HELMS, Plaintiffs,	)	
v.	)	
ERIC R. METER, FRENCH SOCCER NETWORK, EUROPEAN SOCCER NETWORK, NORTH CAROLINA YOUTH SOCCER ASSOCIATION, INC., THE GOODYEAR TIRE & RUBBER COMPANY, GOODYEAR LUXEMBOURG TIRES SA, GOODYEAR LASTIKLERI T.A.S. and GOODYEAR DUNLOP TIRES FRANCE SA., Defendants.	)	From Onslow County 05 CvS 1922 COA 08-944

* * * * * * * * * * * * *

PLAINTIFFS' RESPONSE TO DEFENDANTS' NOTICE OF APPEAL UNDER N.C. GEN. STAT. § 7A-30

and

DEFENDANTS' PETITION FOR DISCRETIONARY REVIEW UNDER N.C. GEN. STAT. § 7A-31(C)

* * * * * * * * * * * * *

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

STATEMENT OF THE FACTS AND OF THE CASE

This is a wrongful death case involving two 13-year-old boys, Matthew Helms of Jacksonville and Julian Brown of Charlotte, youth soccer players who were killed in a bus wreck near Paris, France. The trip to France was arranged by the N.C. Youth Soccer Association for players considered the best under age 14 youth soccer players in the state. (R p. 61). The complaint alleges that on April 18, 2004, as they were on a bus headed to the airport in Paris to return home, one of the bus' Goodyear tires failed when its plies separated. (R p. 66). The bus driver lost control of the bus and it overturned, killing both boys. (R p. 65).

The initial suit named the company that arranged the trip, among others, as defendants. Plaintiffs later learned, during a French criminal negligent homicide investigation conducted after the accident, that one of the bus tires was found to be defective and a cause of the wreck. Plaintiffs amended their complaint, filing suit in Onslow County against several defendants, including Goodyear Tire & Rubber Co. and its subsidiary foreign corporations that plaintiffs alleged designed, manufactured and distributed the tire for sale in

France, and in the United States. (R p. 58). Plaintiffs alleged that the tire was defectively manufactured and designed, and that it breached express and implied warranties. (R p. 77-87).

The Goodyear foreign defendants filed motions to dismiss for lack of personal jurisdiction, alleging that each of the foreign Goodyear corporations lacked the requisite minimum contacts and could not reasonably anticipate being haled into court in North Carolina. (R p. 93-130). The three defendants in this appeal designed, manufactured and distributed the defective tire. (R p. 77-78). Goodyear, which had previously stated in affidavits that the companies did not do business in North Carolina, later admitted in discovery that the companies manufactured 44,000 tires shipped for sale into North Carolina in the previous three years. (R pp. 165-167). The trial court found that the Goodyear foreign defendants had sufficient continuous and systematic contacts with North Carolina to be subject to personal jurisdiction here. (R pp. 177-83). From that order, defendants appealed. (R p. 185). The N.C. Court of Appeals unanimously upheld the trial court's order denying defendants' motion to dismiss. From that order, defendants gave notice of appeal and petitioned for discretionary review.

I. INTRODUCTION AND OVERVIEW

The Court of Appeals followed this process in assessing the trial court's order:

First, it acknowledged that it must rely on the trial court's findings of fact, as long as those findings are supported by competent evidence in the record.

Second, it conducted a *de novo* review of the trial court's conclusions of law and determined

whether, given the facts found by the trial court, the exercise of personal jurisdiction would violate the defendants' due process rights.

In making that *de novo* review, the court used the five-part test established by North Carolina courts to determine whether general jurisdiction should apply in such cases. Fraser v. Littlejohn, 96 N.C. App. 377, 386 S.E.2d 230 (1989).

In looking at those steps in turn, we see that this is an ordinary case using well-settled principles to analyze personal jurisdiction, and not, despite the defendants' bombastic claims, a decision that "single-handedly overturned decades of carefully crafted jurisprudence" and "contravenes fundamental due process rights under the Fourteenth Amendment." (Def. pet. pp. 6, 15).

This is particularly evident once all the evidence the trial court accepted is analyzed - not just the few selected facts chosen by the defendants.

II. THIS CASE DOES NOT INVOLVE A SUBSTANTIAL QUESTION ARISING UNDER THE CONSTITUTIONS OF THE UNITED STATES OR NORTH CAROLINA, NOR DOES IT INVOLVE A SIGNIFICANT PUBLIC INTEREST OR LEGAL PRINCIPLES OF MAJOR SIGNIFICANCE TO THE JURISPRUDENCE OF THE STATE.

To qualify for review under N.C. Gen. Stat. § 7A-30, defendants must demonstrate that this case involves "a substantial question arising under the Constitution of the United States or of this state." To exercise this appeal of right, defendants must show the existence of a real and substantial constitutional question which has not already been the subject of

conclusive judicial determination. Thompson v. Thompson, 215 S.E.2d 606, 288 N.C. 120 (1975)

In the alternative, defendants have petitioned for discretionary review under N.C. Gen. Stat. § 7A-31(C), claiming that the matter is of "significant public interest or that the cases "involves legal principles of major significance to the jurisprudence of the State."

A thorough review of this case, however, shows it involves long-standing principles previously developed by our courts and correctly applied by a unanimous N.C. Court of Appeals, and plaintiffs petition this court to dismiss this appeal.

A. Appellate review is limited by the findings of fact by the trial court.

It is important to examine the limits of the Court of Appeals opinion. The issue before the trial court was one of personal jurisdiction in which both sides presented evidence, including affidavits, photographs and deposition testimony. (R pp. 105, 119, 124, 141, 165). The trial court, therefore, was required to act as fact finder, determining the credibility of the evidence presented to it.

The trial court found the necessary facts to establish personal jurisdiction in this case, and the defendants have a high burden to try to overcome the trial court's determination. (R p. 177).

> "[T]he standard of review of an order determining personal jurisdiction is whether the findings of fact by the trial court are supported by competent evidence in the record; if so, this Court must affirm the order of the trial court." Replacements, Ltd. v.

> MidweSterling, 133 N.C. App. 139, 140-41, 515 S.E.2d 46, 48 (1999). "The determination of whether jurisdiction is statutorily and constitutionally permissible due to contact with the forum is a question of fact." Hiwassee Stables,Inc. v. Cunningham, 135 N.C. App. 24, 27, 519 S.E.2d 317, 320 (1999).

Cooper v. Shealy, 140 N.C. App. 729, 732, 537 S.E.2d 854, 856 (2000).

The trial court, as fact finder in personal jurisdiction cases, is permitted to make judgments regarding the credibility of the evidence and of the witnesses, and those judgments cannot be disturbed on appeal. *See* Deer Corp. v. Carter, 117 N.C. App. 314, 629 S.E.2d 159 (2006) (where it appeared the trial court believed one party over another witness regarding jurisdictional evidence, the Court of Appeals is "not free to revisit questions of credibility or weight that have already been decided by the trial court." Id. at 324, 629 S.E.2d 267, *citing* Banc of America Securities LLC v. Evergreen Intern, 169 N.C. App. 690, 695, 611S.E.2d179, 183 (2005)).

B. The trial court found many facts demonstrating Defendants' substantial and continuous ties with North Carolina.

The Court of Appeals noted that much of the evidence in the case is undisputed by the defendants, and in reviewing the case, found for the plaintiffs based solely on the undisputed facts. "Defendants do not dispute that the majority of the trial court's findings of fact are supported by adequate evidentiary support; therefore, we will base the

factual component of our analysis on the undisputed information contained in the trial court's order." Slip. Op. p. 10. (emphasis added). While the Court of Appeals found it needed to consider only the undisputed evidence to uphold the trial court, plaintiffs note that they are entitled to the benefit of all the trial court's findings of fact that have adequate evidentiary support.

Essentially, the foreign Goodyear defendants characterized themselves as mom and pop businesses that were unaware that thousands of their tires were being sold in North Carolina.

In actuality, those foreign Goodyear manufacturers are part of a sophisticated and highly integrated system for manufacturing and distributing tires around the world, and they were manufacturing tires specifically labeled for sale in the United States, including North Carolina.

In reaching its findings of fact, the trial court reviewed depositions, affidavits, expert testimony and photographs. Plaintiffs will not list all of the trial court's findings of fact - those are set out in detail in the Court of Appeals opinion. But the evidence showed that the foreign defendants manufactured the tire at issue, which was written entirely in English, with warnings and directions, and U.S. Department of Transportation markings to allow it to be sold in the United states. It include U.S. code listing load and pressure ratings set by the U.S. Tire and Rim Association, and a "Safety Warning," written in English that conforms to the warnings found on all tires sold in the United States. Slip Op. p. 4.

The court found that the three companies manufactured a total of more than 44,000 tires sold in North Carolina during a 3-year period, and found that that number might be substantially higher, given that Goodyear failed to answer 30(b)(6) depositions questions authorized by the court. Slip op. p. 5.

The trial court specifically found that "The defendants knew or should have known that tires they manufactured were shipped to the United States through their Goodyear parent and affiliated companies and sold in North Carolina on a continuous and systematic basis." Slip op. p. 6. The court also found that the defendants are all subsidiaries of Goodyear in the United States and have "additional abundant ties to the United States." Id.

C. The Court of Appeals analyzed the five factors considered for general jurisdiction and found that they weighed in favor of the exercise of personal jurisdiction.

The Court of Appeals stated that personal jurisdiction cannot be exercised over a defendant "unless the defendant has had certain 'minimum contacts' with the forum state such that 'traditional notions of fair play and substantial justice' are not offended by maintenance of the suit." Slip op. p. 11, *citing* Cameron-Brown Co. v. Daves, 83 N.C. App. 281, 284, 350 and Int'l Shoe Co. v. Washington, 326 U. S. 310, 90 L. Ed. 95 (1945).

The Court of Appeals noted that a five-part test – which was applied by the trial court - is used to aid in this analysis. The factors to be considered are: (1) the quantity of the contacts, (2) the nature and

quality of the contacts, (3) the source and connection of the cause of action to the contacts, (4) the interest of the forum state, and (5) convenience. Fraser v. Littlejohn, 96 N.C. App. 377, 383, 386 S.E.2d 230, 234 (1989).

The trial court and the Court of Appeals found that these factors weigh in the favor of the plaintiffs, and that "traditional notions of fair play and justice" compelled a finding that North Carolina courts should exercise jurisdiction.

Taking these factors in turn:

a. Quantity of the contacts. The three foreign Goodyear defendants admitted that some 44,000 tires they have manufactured or designed were sent to this state for sale. (Goodyear Laskilieri, 5,906 tires; Goodyear Luxembourg Tires SA, 6,402 tires; Goodyear Dunlop Tires France SA, 33,923 tires) Those tires "come in on a regular basis," according to Goodyear's 30(b) (6) designee. (Dep. Kramer, p. 21).

The Court of Appeals noted that North Carolina courts have found jurisdiction when there is only a fraction of the sales in this case. For example, in Dillon v. Numismatic Funding Corp., 291 N.C. 674, 231 S.E.2d 626 (1977), the court found sufficient contacts for general jurisdiction with sales to only 27 North Carolinians.

In Hankins v. Somers, 39 N.C. App. 617, 251 S.E.2d 640 (1979), the court found that evidence of sales of wire art products in North Carolina to "a substantial extent" was sufficient to demonstrate general jurisdiction.

b. The nature and quality of the contacts. In this case, the contacts are not fleeting, such as mere

phone calls into the state, or advertisements in national publications that happen to reach North Carolina. Instead, defendants are attempting to sell as many tires as possible in North Carolina. Defendants purposefully and intentionally send tires from their subsidiary foreign manufacturers, importing them into the United States and selling them in the North Carolina market.

The Court of Appeals stated:

> According to the trial court's findings, the distribution chain through which tires manufactured by Defendants were shipped into the United States and, eventually, into North Carolina, was 'a continuous and systematic process' rather than a sporadic or episodic one. As a result, the trial court's findings indicated that, through a regular process employed within the Goodyear organization, a substantial number of tires manufactured by the Defendants were imported into the United States and distributed to various entities in North Carolina.

Slip op. pp. 25-26.

Goodyear sells tires from these defendants in North Carolina on a continuing basis, through a highly integrated structure, and is doing so today. In selling its tires here, a defendant "avails himself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws." Tom Togs, Inc. v. Ben Elias Industries Corp., 318 N.C. 361, 365, 348 S.E.2d 782, 786 (1986) That

relationship, in and of itself, is enough for the court to find jurisdiction.

Defendants' contacts with the state are both continuous and systematic. They do business here by repeatedly selling thousands of tires within our state. Those sales are admitted to have taken place on a regular basis over the previous three years.

The nature and quality of those contacts was found to be deliberate and substantial, in that the companies purposefully targeted the North Carolina market, selling thousands of tires here on a continuing basis.

The nature and quality of the contacts with North Carolina, supported the trial court's finding of general jurisdiction.

c. The source and connection of the cause of action to the contacts. General jurisdiction permits the exercise of jurisdiction over a defendant even when the cause of action is completely unrelated to the source of the contacts.

In this case, however, there is a significant nexus between the contacts with North Carolina and the cause of action. The defendants' contacts with North Carolina consist of thousands of tires they manufacture being shipped to North Carolina and sold to its residents, generating hundreds of thousands of dollars in revenue. Thousands of the defendants' tires are being used on thousands of vehicles today in North Carolina.

It is foreseeable to those defendants that one or more of their tires might fail, injuring a North Carolina resident, and the defendants might have to

defend a lawsuit here. Jurisdiction would be beyond question in that case.

The U.S. Supreme Court held in World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S.Ct. 559 (1980), that a manufacturer or distributor who places an item in the "stream of commerce," even indirectly, attempting to serve a market, it is subject to suit in that market.

> If the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

World-Wide Volkswagen at 297-98, 100 S.Ct. at 567.

Overall, the test is this: whether "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." World-Wide Volkswagen at 297, 100 S.Ct. at 567.

In addition, the very tire involved in this case, although sold in France, was designed and manufactured by the defendants so that it could be sold in the United States.

Robert C. Ochs is a registered professional engineer with 25 years of experience working in the tire industry, including the European tire industry. He worked for Michelin Tire in France in a number of positions, including Director of Product Analysis. Mr. Ochs traveled to France and personally examined the tire involved in this wreck. (R p. 142). He stated in his affidavit that the tire involved in this wreck was designed, manufactured and marketed for sale worldwide, including sale in the United States and North Carolina. (R p. 143).

He noted that the information on the tire was written entirely in English and it contained a serial number required by the U.S. Department of Transportation for tires sold in the United States. (R p. 143). The tire contained additional U.S. Department of Transportation markings that were placed there to allow the tire to be sold in the United States. (Id.).

Not only could the defendants reasonably anticipate being haled into court in North Carolina for the sale of one of their tires - they could have been haled into court in North Carolina for the sale of this very tire, were it not for a happenstance of distribution which sent the tire to France instead of North Carolina. Therefore the source and connection of the cause of action to the contacts is very strong.

d. Interest of the forum state. Protection of children is part of the public policy of our state. In this case, two 13-year-old North Carolina residents

were killed when a tire manufactured by defendants failed, causing the bus they were riding in to crash. North Carolina has an interest in protecting its citizens - especially its minor citizens who cannot protect themselves - and allowing them a forum for the redress of grievances. As the N.C. Supreme Court has stated: "It is generally conceded that a state has a 'manifest interest' in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors." Tom Togs, Inc. v. Ben Elias Industries Corp., 318 N.C. 361, 367, 348 S.E.2d 782, 787 (1986). The trial court echoed that opinion, finding that "North Carolina has a substantial interest in allowing its citizens a forum for redress of grievances, especially where two of its citizens were killed, allegedly by the negligence of the defendants." Slip op. p. 7.

e. Convenience. The Court of Appeals found that the convenience factor favors the plaintiffs. It stated that:

> Requiring Plaintiffs, who have no ties to France, to litigate their claims in the French courts would impose a considerable burden on them. Although there is no question but that requiring Defendants to defend an action in the General Court of Justice would be burdensome as well, that burden is alleviated to some extent by the fact that Defendants have corporate affiliates in the United States with business interests in North Carolina, a fact which is simply not true of Plaintiffs.

Slip op. p. 26.

In sum, the trial court and Court of Appeals weighed all of the five factors our courts have said should be considered in claims of general jurisdiction and found that they all favor the plaintiffs.

D. Defendants' argument relies entirely on what they hope will be a loophole in the law.

In essence, the foreign Goodyear defendants are hoping to find a loophole to escape liability. The potential loophole is this: They do not have their own distribution system for their tires. Another Goodyear entity actually ships the tires they manufacture to North Carolina. That way the defendants can each describe themselves as "a nonresident defendant with no contacts with the State of North Carolina" (Def. Petition p. 2) despite the fact that they deliberately manufacture thousands of tires they know will be shipped to the U.S., including North Carolina, for sale.

The trial court simply found, and the Court of Appeals agreed, that a wholly-owned subsidiary that makes hundreds of thousands of tires labeled for shipment into the United States, but does not personally ship any of those tires, leaving it to its U.S.-based parent corporation to do the actual shipping, cannot claim that it has no contacts with the forum state, where that company is continually manufacturing tires labeled for U.S. sale that it knows will be shipped to and sold in North Carolina.

That conclusion comports with other North Carolina cases. For example, in Dillon v. Numismatic Funding Corp., 291 N.C. 674, 231 S.E. 626, the plaintiff, who had formerly lived in South Carolina, sought to sue a New York business in

North Carolina for breach of an employment contract. The contract had no connection to North Carolina, the plaintiff had simply moved here after living in South Carolina, so plaintiff was seeking general jurisdiction.

The court found that the New York company had sold coins worth $50,000 to 27 North Carolinians. That was enough to exercise general jurisdiction over the company, the court said.

"By these acts, it appears that the defendant has purposefully (availed) itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." Id. at 679, 231 S.E. at 632.

E. Goodyear's factual testimony about its distribution scheme shows that its companies are part of a world-wide delivery plan that includes North Carolina.

Defendants portray themselves as isolated businesses in far off countries that happen to sell a product to a distributor who, without their knowledge, resells the product in the United States.

The evidence is far different, and the trial judge who weighed that evidence reached a far different conclusion.

Donn Kramer, Goodyear's 30(b) (6) witness, testified in his deposition about the Turkish manufacturer of the tire at issue, Goodyear Lastikleri T.A.S., and the Goodyear distribution chain. Goodyear Lastikleri T.A.S. is a wholly owned subsidiary of the U.S. Goodyear company, the largest tire company in the world. Mr. Kramer testified that Goodyear Lastikleri manufactures tires at the behest of other Goodyear entities that determine how many tires are needed. Goodyear does an ongoing market

analysis for its tires, determining where there is a market for particular types of tires. Once Goodyear sees a need in the United States – say specifically in North Carolina – for a particular type of tire, it determines which of its world-wide manufacturing plants makes that tire. It then "sources" the tire, telling the appropriate manufacturing plant, such as Goodyear Lastikleri in Turkey, to make the tires and have them shipped. "Their job is to be given a forecast or a ticket and then they just build widgets," Mr. Kramer said of the Goodyear Lastikleri plant. (Kramer dep. p. 36). The tires are sent to the United States "through our own internal distribution," Mr. Kramer testified. (Kramer dep. p. 35). Some of the tires are shipped to the U.S. directly from the foreign manufacturing plant, or they could be shipped first to a warehouse, then forwarded to the U.S., he said. (Kramer dep. p. 38). They are then sold to customers in North Carolina and other states, either at Goodyear brand service centers, or at stores that stock tires from a variety of manufacturers.

Significantly, these defendants had no system for selling or distributing their tires. Instead, they simply manufactured the tires Goodyear told them to manufacture and then turned those tires over to Goodyear for export to any country or place where there was a market for the tires, including the United States and North Carolina. The tires were labeled in English, with U.S. Department of Transportation markings. The companies knew they were manufacturing products for sale to the United States, including North Carolina.

The entire tenor of Mr. Kramer's testimony was that these wholly-owned

subsidiary/manufacturers are part of a highly integrated world-wide business that is based in the United States and which is designed to take advantage of every opening in the marketplace, selling tires throughout the world, including North Carolina.

The trial court's findings of fact reflect that it accepted this testimony, noting that the defendants' tires "continue to be sold to North Carolina residents on a continuous and systematic basis." (R p. 180).

The court further found as a fact:

> 11. The sale of these tires generates substantial revenue for Goodyear, these defendant companies and its related companies.
>
> 12. The defendants, as manufacturers, did not have their own distribution system for the sale of their tires, but instead used their Goodyear parent and affiliated companies to distribute the tires they manufactured to the United States and North Carolina.
>
> 13. The defendants knew or should have known that tires they manufactured were shipped to the United States through their Goodyear parent and affiliated companies and sold in North Carolina on a continuous and systematic basis.
>
> * * *
>
> 17. The defendant companies have deliberately attempted to take advantage of the tire market in North

> Carolina by designing, manufacturing and causing tires to be distributed for sale to the North Carolina market, and those tires are sold in North Carolina.

Slip op. p. 5 -7.

Plaintiffs are not asserting there are minimum contacts with defendants on a "stream of commerce" claim, in which the defendants had nothing to do with where their product eventually ended up. Instead, plaintiffs are alleging that the defendants are part of a highly targeted, integrated world-wide effort to design, manufacture, market and sell their tires in the United States, including North Carolina. Those thousands of tires sold here are not incidental contacts, but instead are calculated and deliberate efforts to take advantage of the North Carolina market for tires.

CONCLUSION

Our courts have stated that general jurisdiction may be asserted over a defendant when the cause of action is unrelated to defendant's activities in the forum "as long as there are sufficient 'continuous and systematic' contacts between defendant and the forum state." Replacements, Ltd. v. MisweSterling, 133 N.C. App. 139, 145, 515 S.E.2d 46, 51 (1999) (quoting Fraser v. Littlejohn, 96 N.C. App. 377, 383, 386 S.E.2d 230, 234 (1989)).

"'There must be sufficient 'minimum contacts' between the nonresident defendant and our state 'such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" Skinner v. Preferred Credit, 361 N.C. 114, 122, 638 S.E.2d 203, 210 (2006) (quoting Int'l Shoe Co.

v. Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95, 102 (1945)).

In this case, the trial court found, and the Court of Appeals agreed, that the defendants purposefully availed themselves of the protections of the laws of North Carolina, and the benefits of commerce in our state, by manufacturing products that were to be sold in North Carolina through their parent corporation. Defendants have substantial ties to North Carolina, in all sending more than 44,000 tires into the state for sale in the past three years. Those ties are continuous, ongoing and systematic, in that the companies' products are regularly sourced from the related Goodyear manufacturing plants and sent into our state for sale.

The Court of Appeals examined the trial court's findings of facts, correctly applied the law in analyzing jurisdiction, and concluded that jurisdiction was proper.

Plaintiffs respectfully request that the Court dismiss this appeal, refuse to grant discretionary review, and uphold the N.C. Court of Appeals decision.

This is the 5th day of October, 2009.

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CERTIFICATE OF SERVICE

The undersigned hereby certify that a copy of the foregoing PLAINTIFFS' RESPONSE TO DEFENDANTS' NOTICE OF APPEAL UNDER N.C. GEN. STAT. § 7A-30 and DEFENDANTS' PETITION FOR DISCRETIONARY REVIEW UNDER N.C. GEN. STAT. § 7A-31(c) was served on opposing party by depositing a copy in the U.S. mail addressed to the following:

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/s/
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PETITIONER'S BRIEF

Supreme Court, U.S.
FILED
NOV 12 2010
OFFICE OF THE CLERK

No. 10-76

IN THE

Supreme Court of the United States

GOODYEAR LUXEMBOURG TIRES, SA,
GOODYEAR LASTIKLERI T.A.S., AND
GOODYEAR DUNLOP TIRES FRANCE, SA,

Petitioners,

v.

EDGAR D. BROWN AND PAMELA BROWN, CO-ADMINISTRATORS OF THE ESTATE OF JULIAN DAVID BROWN, AND KAREN M. HELMS, ADMINISTRATRIX OF THE ESTATE OF MATTHEW M. HELMS,

Respondents.

On Writ of Certiorari to the North Carolina Court of Appeals

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QUESTION PRESENTED

Whether a foreign corporation is subject to general personal jurisdiction, on causes of action not arising out of or related to any contacts between it and the forum state, merely because other entities distribute in the forum state products initially placed in the stream of commerce by the corporation.

PARTIES TO THE PROCEEDING

The parties to the proceeding below were Petitioners-Defendants Goodyear Luxembourg Tires, SA (now known as Goodyear Dunlop Tires Operations, SA), Goodyear Lastikleri T.A.S., and Goodyear Dunlop Tires France, SA; Defendants Eric R. Meter, French Soccer Network, European Soccer Network, North Carolina Youth Soccer Association, Inc., The Goodyear Tire & Rubber Company, Goodyear Dunlop Tires Europe B.V., and Goodyear SA; and Respondents-Plaintiffs Edgar D. Brown and Pamela Brown, as Co-Administrators of the Estate of Julian David Brown, and Karen M. Helms, as Administratrix of the Estate of Matthew M. Helms.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioners disclose as follows:

Petitioners Goodyear Luxembourg Tires, SA (now known as Goodyear Dunlop Tires Operations, SA), Goodyear Lastikleri T.A.S., and Goodyear Dunlop Tires France, SA, are indirect subsidiaries of The Goodyear Tire & Rubber Company. In addition, Sumitomo Rubber Industries, Ltd., indirectly owns more than 10% of the stock of Goodyear Luxembourg Tires, SA (now known as Goodyear Dunlop Tires Operations, SA), and Goodyear Dunlop Tires France, SA. No other publicly held company owns 10% or more of the stock of any of these entities.

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OPINIONS BELOW

The opinion of the North Carolina Court of Appeals (Pet. App. 1a-29a) is reported at 681 S.E.2d 382. The North Carolina Superior Court's opinion (Pet. App. 30a-36a) is unreported. The North Carolina Supreme Court's denial of review (Pet. App. 37a-38a) is reported at 695 S.E.2d 756, 364 N.C. 128.

JURISDICTION

The North Carolina Court of Appeals entered its judgment on August 18, 2009. Pet. App. 1a. The North Carolina Supreme Court denied review on April 14, 2010. Pet. App. 37a-38a. Jurisdiction in this Court exists under 28 U.S.C. § 1257(a). *See Shaffer v. Heitner*, 433 U.S. 186, 195 n.12 (1977); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 485 (1975).

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV, § 1, cl. 2.

STATEMENT OF THE CASE

In this case, Petitioners Goodyear Luxembourg Tires, SA (now known as Goodyear Dunlop Tires Operations, SA) ("Goodyear Luxembourg"), Goodyear Lastikleri T.A.S. ("Goodyear Turkey"), and Goodyear Dunlop Tires France, SA ("Goodyear France") (collectively, "Petitioners") all of them indirect subsidiaries of The Goodyear Tire & Rubber Company, an Ohio corporation challenge North Carolina's exercise of general adjudicative jurisdiction over them on causes of action unrelated to any contacts with the state. Pet. App. 28a-29a. The court below based such general jurisdiction solely on the fact that a portion of the tires that Petitioners manufacture has reached the state via the stream of commerce. Pet. App. 29a.

As the court below recognized, this lawsuit does not arise out of or relate to even those attenuated contacts. Pet. App. 12a. Rather, it arises out of an April 18, 2004, bus accident in France that took the lives of two North Carolina teenagers traveling in Europe. The decedents' estates ("Respondents") filed this suit in North Carolina state court against Petitioners, The Goodyear Tire & Rubber Company, and other defendants, claiming, *inter alia*, that an allegedly defective tire on the bus had contributed to the accident. JA 138-39.

A. Petitioners' Business

Goodyear Luxembourg, Goodyear Turkey, and Goodyear France are incorporated and located in Luxembourg, Turkey, and France, respectively. JA 121-22. None of the three Petitioners has ever had a place of business or employed anyone in North Carolina; advertised or solicited business in the state;

sold any products in North Carolina or shipped products into the state; manufactured or designed products there; or negotiated contracts, paid taxes, or maintained bank accounts there. JA 155-57, 165-67, 184-86. Petitioners are not registered to do business in North Carolina, have not appointed registered agents in North Carolina to receive service of process, and have never previously used the state's court system. JA 156-57, 166-67, 185-86.

Petitioners make tires primarily for sale in European and Asian markets. These markets differ from United States markets in that tires sold there typically vary in size from American tires; are designed to carry significantly heavier loads; and are constructed differently to account for variations in local roads and driving speeds. JA 229-30, 235.

Although a small percentage of Petitioners' tires has been distributed in North Carolina, Petitioners, as the court below recognized, took no "affirmative action to cause" that to occur, and "other entities were responsible for" any North Carolina distribution. Pet. App. 22a. Specifically, from time to time, The Goodyear Tire & Rubber Company determined that it needed to obtain tires made in Europe as, for example, in the case of an emergency resulting from a labor strike in the United States, JA 237-38, or because some "unique . . . vehicles . . . ha[d] been imported" into the United States and required specially sized tires, JA 241. In those instances, the tires would be purchased from a different European affiliate, which in turn would "source" them, at times, from Petitioners. JA 241.

In this fashion, between 2004 and 2007 a total of approximately 45,000 tires sold by the three Petitioners reached North Carolina, JA 293-94, as against Petitioners' total manufacturing capacity during that period of more than 90 million tires.[1] Many of the tires that reached the United States were for specialized vehicles, such as horse and boat trailers, cement mixers, and waste haulers. JA 242, 248, 250. In contrast, the type of tire at issue in this litigation a Goodyear Regional RHS tire, which is designed for highway truck and bus driving in Europe, JA 233-34 is a size that is not generally used in the United States,[2] JA 244-45, 253, and was never distributed in North Carolina. JA 237-40.

B. The Trial Court's Decision

After Respondents initiated this suit against Petitioners by serving them with process overseas, JA 2-118, Petitioners moved to dismiss the complaint for want of personal jurisdiction. The trial court denied the motions, holding that Petitioners were subject to general jurisdiction in North Carolina i.e., jurisdiction on any claim, arising anywhere in the

[1] *See Global Tyre Report 2004*, Eur. Rubber J., Dec. 2004, at 21-22, 27; *Global Tyre Report 2005*, Eur. Rubber J., Nov./Dec. 2005, at 15, 21-22, 29; *Global Tyre Report 2006*, Eur. Rubber J., Nov./Dec. 2006, at 15, 20-21, 27; *Global Tyre Report 2007*, Eur. Rubber J., Nov./Dec. 2007, at 15, 20-21, 29.

[2] A "very, very, very small quantity" was available for United States distribution in the winter of 2006-2007, when an employee strike disrupted domestic tire production by Goodyear in the United States. JA 237-38. Almost all of these Goodyear Regional RHS tires were eventually shipped back to Europe, as they were not designed for the United States market. JA 238.

world, without need of any connection between the claim and North Carolina. Pet. App. 36a. The trial court emphasized, among other things, that Petitioners "knew or should have known that some of th[eir] tires were distributed for sale to North Carolina residents," Pet. App. 33a, and termed this "substantial activity within North Carolina" that should have led Petitioners to "reasonably anticipate being haled into court [there]" on claims arising anywhere in the world, Pet. App. 34a.

C. The North Carolina Court Of Appeals' Decision

The North Carolina Court of Appeals affirmed. Pet. App. 2a. It acknowledged that "this case involves general rather than specific jurisdiction," because "[t]he present dispute is not related to, nor did it arise from, [Petitioners'] contacts with North Carolina." Pet. App. 12a-13a. And the court further recognized that there was no "evidence that [Petitioners] took any affirmative action to cause tires which they had manufactured to be shipped into North Carolina." Pet. App. 22a. Rather, separate (if affiliated) "entities were responsible for the shipment of tires manufactured by [Petitioners] to the United States and, as a part of that process, the tires arrived in North Carolina." Pet. App. 22a.

The court nonetheless upheld the exercise of general personal jurisdiction over Petitioners, holding that the key "question . . . is whether [Petitioners] have purposefully injected their products into the stream of commerce without any indication that they desired to limit the area of distribution of their product so as to exclude North Carolina." Pet. App. 20a (internal quotation marks

and alterations omitted). Here, the court found, Petitioners "knew or should have known" that some of their tires were ultimately distributed in the United States; "several thousand tires manufactured by each of the [Petitioners] eventually found their way into North Carolina markets"; and North Carolina had a "well-recognized interest in providing a forum in which its citizens are able to seek redress for injuries that they have sustained." Pet. App. 27a.

Petitioners timely sought review from the North Carolina Supreme Court, which denied review without opinion. Pet. App. 38a.

SUMMARY OF ARGUMENT

The exercise of general jurisdiction over Petitioners, simply because their products reached North Carolina through the stream of commerce, violates the Due Process Clause. Such tenuous contacts with the forum, on the part of defendants lacking any physical presence there, fall far short of the high threshold ordinarily required for general jurisdiction: to wit, "continuous corporate operations within a state" that are "so substantial and of such a nature," *International Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945), as to justify global judicial authority over all of a defendant's conduct. The decision below vastly expands the limited scope of general jurisdiction, embracing a standard under which any substantial seller of goods would be amenable to suit, on any cause of action, wherever its products are distributed.

This unrecognizably broad vision of general jurisdiction must be rejected for two principal reasons. First, longstanding pre-*International Shoe* case law which has continuing vitality under

International Shoe in limiting general jurisdiction rejected mere sales in a state as a basis for jurisdiction. Second, even aside from that history, the modern personal-jurisdiction analysis of *International Shoe* and its progeny is equally inconsistent with the expansive scope of general jurisdiction adopted below.

I. This Court has treated pre-*International Shoe* cases as restricting the circumstances in which corporate activities in a state may be deemed sufficient to justify general jurisdiction. Under those earlier cases, a corporation could not be deemed "present" in a state as was then required for jurisdiction without, at a minimum, significant physical presence in the state. In particular, this Court held that sales of an absent corporation's products in the state, even by a corporate affiliate, did not establish the necessary corporate "presence." *E.g., Consol. Textile Corp. v. Gregory*, 289 U.S. 85, 88 (1933). Under these cases, due process does not permit general jurisdiction on the basis relied upon below.

Further, *International Shoe* and its progeny confirm these longstanding minimum requirements for general jurisdiction. Indeed, this Court's only modern case upholding general jurisdiction over a corporation involved the corporation's principal place of business. And the Court's only other corporate general jurisdiction case found that pre-*International Shoe* case law concerning corporate "presence" precluded general jurisdiction.

II. The decision below equally violates the more contemporary due-process standards of *International Shoe*.

A.1. Due-process restrictions on jurisdiction prevent states from asserting judicial authority over a non-resident defendant absent a basis for the assertion of power sufficient to make it "reasonable, in the context of our federal system of government." *Int'l Shoe*, 326 U.S. at 317. For specific jurisdiction, the state's power stems from its authority over conduct by the defendant that occurs within or affects the state. But general jurisdiction, by definition, involves conduct *un*related to the state, and it therefore must be justified solely on the relationship between the *defendant* and the state.

The only established basis for such broad authority is the close relationship of a state with its citizens and residents, which suggests narrow limits for the extraordinary authority represented by general jurisdiction. At a minimum, the mere distribution of an out-of-state corporation's products in a forum state cannot justify the state's assertion of general authority over that corporation analogous to its authority over citizens and residents.

2. This Court has often emphasized the importance of whether a defendant can "reasonably anticipate" being haled into the courts of the forum. Here, in light of the unprecedented nature of general jurisdiction over a defendant without any physical presence in the forum compounded by the even greater novelty of establishing general jurisdiction based solely on stream-of-commerce contacts this factor weighs heavily against jurisdiction.

3. Likewise, the notion of "reciprocity" or "exchange" that a defendant which obtains the benefits of doing business in a state is subject to reciprocal obligations further demonstrates the

overreaching nature of the assertion of jurisdiction in this case. Subjecting Petitioners to general jurisdiction over all of their global conduct is vastly disproportionate to the limited benefits they received from North Carolina as one of the destinations of their products in the stream of commerce.

4. While convenience cannot justify an otherwise improper assertion of jurisdiction, *in*convenience is relevant to the due-process calculus. And, unlike general jurisdiction over a corporation in a state in which it has significant operations, subjecting corporations to suit in states where they have no physical presence, on claims arising across the globe, is presumptively inconvenient and unfair.

5. The negative consequences of the rule adopted below further demonstrate its inconsistency with the vision of limited state power embodied in this Court's personal-jurisdiction decisions. Allowing general jurisdiction wherever one's products are distributed would result in virtually universal jurisdiction in every state's courts over every significant foreign or domestic seller. The attendant invitation to rampant forum shopping is inconsistent with both basic fairness and "the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." *Int'l Shoe*, 326 U.S. at 319. Moreover, the rule of expansive general jurisdiction adopted below creating widespread amenability to suit resulting from limited contacts is likely to significantly deter interstate and (particularly) foreign commerce.

B. Further, even if general jurisdiction could be based on stream-of-commerce contacts in some cases, this would not be such a case. There is no evidence

that Petitioners even knew their tires were sold in North Carolina, let alone that they purposefully directed their products at North Carolina. *See Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987). Nor are the quantities of Petitioners' tires distributed in North Carolina sufficient to meet any plausible standard for general jurisdiction.

C. Lastly, the assertion of jurisdiction in this case fails *Asahi*'s alternative "reasonableness" prong. As in *Asahi*, the unique burden on Petitioners, as foreign corporations, is severe. Additionally, North Carolina has little legitimate interest in out-of-state conduct; much of the evidence is located overseas; and the international setting, again as in *Asahi*, militates against the aggressive expansion of personal jurisdiction adopted below.

III. Respondents' Brief in Opposition to certiorari suggested that they may seek to rely on specific jurisdiction, but they have waived any such argument. In any event, their claims plainly do not arise out of or relate to Petitioners' contacts with North Carolina as required for specific jurisdiction and fail to satisfy the requirements of this Court's stream-of-commerce doctrine.

ARGUMENT

The familiar formulation of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) premising jurisdiction over foreign corporations on the existence of sufficient corporate "contacts" with a state, *id.* at 316-17 protects defendants against state assertions of judicial authority that "reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292

(1980). The decision below erases many of those limits, as it would subject every significant seller of goods, foreign or domestic, to general jurisdiction in every state of the Union, over its conduct anywhere in the world. Not only would "[e]very seller of chattels . . . in effect appoint the chattel his agent for service of process" a result this Court warned against in *World-Wide Volkswagen*, 444 U.S. at 296 but those chattels would subject the seller to unlimited jurisdiction over entirely unrelated causes of action.

This Court has long implicitly and since *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984), explicitly recognized two methods for establishing the basis needed to justify haling a defendant into the courts of a particular state: "specific jurisdiction" and "general jurisdiction." *Id.* at 414 & nn.8-9. Specific jurisdiction the dominant form since *International Shoc* refers to the assertion of jurisdiction over cases that "aris[e] out of or relate[] to" the defendant's particular contacts with the state, *Helicopteros*, 466 U.S. at 414 & n.8, giving the state authority based on "the relationship among the defendant, the forum, and the litigation." *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977). As the court below recognized, specific jurisdiction is inapplicable here, because the claim "is not related to, nor did it arise from, [Petitioners'] contacts with North Carolina." Pet. App. 12a.

Instead, this case concerns general jurisdiction, which refers to the assertion of jurisdiction over cases that are *not* related to the defendant's forum activities. *Helicopteros*, 466 U.S. at 414 & n.9.

Because general jurisdiction gives the state authority over all of a defendant's conduct wherever it occurs, and without need of any connection to the state it is limited to circumstances in which a corporation maintains "continuous corporate operations within a state" that are "so substantial and of such a nature," as to justify such a global assertion of authority over the defendant. *Int'l Shoe*, 326 U.S. at 318. Only one post-*International Shoe* case *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952) has upheld general jurisdiction over a non-domiciliary corporation, and in that case the forum state was "the corporation's principal, if temporary, place of business." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779 n.11 (1984).

This Court has never precisely defined how substantial the "continuous corporate operations within a state" must be to justify general jurisdiction under *International Shoe*. But the North Carolina Court of Appeals' holding here that a corporation with no physical presence in the forum state is subject to general jurisdiction simply because its products reached the state through the stream of commerce, Pet. App. 27a-29a cannot be justified under any of the "'traditional notions of fair play and substantial justice'" that have marked the boundaries of personal jurisdiction since *International Shoe*. 326 U.S. at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

There are at least two reasons why the novel exercise of general jurisdiction in this case "offend[s]" these notions of fairness. *Int'l Shoe*, 326 U.S. at 316. First, longstanding historical precedent holds that the distribution to and sale in the forum state of a

foreign corporation's products do not suffice to establish jurisdiction; and this Court held in *Helicopteros* that, within the *International Shoe* framework, such prior precedent continues to limit the permissible exercise of general jurisdiction. *See infra* Part I.

Second, under the more modern principles of *International Shoe*, it is equally clear that the decision below must be reversed. A state has no legitimate basis for treating the mere distribution of some of a corporation's products in the state as providing it with global judicial authority over that corporation's worldwide conduct. The holding below expands general jurisdiction far beyond the bounds set by *International Shoe*, and defies any conceivable justification under the Due Process Clause. *See infra* Part II.

I. THIS COURT'S PRE-*INTERNATIONAL SHOE* CASES REJECTING JURISDICTION BASED ON THE MERE SALE OF A DEFENDANT'S PRODUCTS IN A FORUM PRECLUDE OR AT LEAST MAKE HIGHLY SUSPECT ANY EXERCISE OF GENERAL JURISDICTION ON THAT BASIS.

In contrast to specific jurisdiction as to which *International Shoe* largely superseded prior case law this Court has made clear that its prior cases remain highly relevant within the *International Shoe* framework in setting boundaries on when "continuous corporate operations within a state" are "so substantial and of such a nature," *Int'l Shoe*, 326 U.S. at 318, as to justify the state's exercise of general jurisdiction over the corporation. *See Helicopteros*, 466 U.S. at 417-18.

Those prior cases establish that a foreign corporation could not be deemed "present" in the forum as required for personal jurisdiction under the regime of *Pennoyer v. Neff*, 95 U.S. 714, 733 (1877) unless the corporation had a significant physical presence there. In particular, the Court repeatedly held that the mere sales of a corporation's products in the state or other in-state business conducted by others on its behalf did not suffice to establish the necessary corporate "presence." The holding below is thoroughly inconsistent with these principles.

A. General Jurisdiction Is Unavailable Or At A Minimum Highly Suspect When A Corporation's Activities In The Forum Do Not Even Rise To The Level Of "Presence" Historically Required For Jurisdiction.

This Court's modern general-jurisdiction cases establish that pre-*International Shoe* case law remains relevant in setting boundaries on general jurisdiction. Indeed, this Court's cases suggest that "presence" in the forum under historical standards remains a *sine qua non* of a permissible exercise of general jurisdiction.

In *Helicopteros*, for example, this Court relied on the pre-*International Shoe* case of *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516 (1923), as precluding an argument that a corporation's regular "purchases and related trips" in the forum state justified general jurisdiction. 466 U.S. at 417. In doing so, the Court indicated that general jurisdiction could not exist over a corporation unless it had the "presence" in the state required under pre-*International Shoe* standards, quoting *Rosenberg* for

the decisive proposition that "'[v]isits on such business, even if occurring at regular intervals, would not warrant the inference that the corporation was present within the jurisdiction.'" *Helicopteros*, 466 U.S. at 417 (quoting *Rosenberg*, 260 U.S. at 518). In short, the Court held that in-state activities that "'would not warrant the inference that the corporation was present within the jurisdiction'" under pre-*International Shoe* standards were necessarily insufficient as a basis for general jurisdiction today. *Helicopteros*, 466 U.S. at 417 (quoting *Rosenberg*, 260 U.S. at 518).[3]

Similarly, in *Burnham v. Superior Court*, 495 U.S. 604 (1990) which involved an assertion of general jurisdiction over an individual based on service of process in the forum state Justice Scalia's plurality opinion explained that *International Shoe* expanded historical standards of jurisdiction *only* with respect to specific jurisdiction: "We have held . . . deviations [from those historical standards] permissible, but only with respect to *suits arising out of the absent defendant's contacts* with the State." *Id.* at 610 (emphasis added); *see also id.* at 618 (*International Shoe* permits "a State [to] dispense with in-forum personal service on nonresident defendants *in suits arising out of their activities in the State*") (emphasis added).

[3] As discussed below, *see infra* Part II, general jurisdiction under *International Shoe* may well require considerably more than was required for corporate "presence" under historical standards; it was never established that corporate "presence" was a sufficient constitutional basis for jurisdiction over anything other than claims arising out of the corporation's in-state activities. *See infra* Part I.B.

Further, Justice Brennan's concurrence in *Burnham* while disagreeing that historical standards were dispositive agreed that "history is an important factor" in the due-process calculus, because it is relevant to a defendant's "reasonable expectations" as to whether he "'is subject to suit' in the forum." *Id.* at 629, 636-37 (quoting *World-Wide Volkswagen*, 444 U.S. at 297). Justice Brennan's point follows from the principle one "critical to due process" that jurisdiction is absent unless "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen*, 444 U.S. at 297; *see also id.* (important that potential defendants have some "assurance as to where [their] conduct will and will not render them liable to suit").

Lastly, and more generally, the Court has repeatedly looked to "traditional practice" as a "touchstone" for the rights set forth in the Due Process Clause. *Honda Motor Co. v. Oberg*, 512 U.S. 415, 430 (1994); *see Tumey v. Ohio*, 273 U.S. 510, 523-24 (1927). An assertion of general jurisdiction that goes beyond the circumstances historically recognized as a valid basis for personal jurisdiction is, at a minimum, suspect. *See Oberg*, 512 U.S. at 430.

B. Under Historical Standards, The Mere Sale Of A Corporation's Products In A State Was Insufficient To Establish Its "Presence" For Jurisdictional Purposes.

Before *International Shoe*, a state's jurisdiction over a non-resident defendant depended on the defendant's presence in the forum when served with

process. Under this approach, state courts had jurisdiction only "over nonresidents who [were] physically present in the State," *Burnham*, 495 U.S. at 610 (plurality opinion); *see Pennoyer*, 95 U.S. at 722; Joseph Story, Commentaries on the Conflict of Laws § 539 (4th ed. 1852).

Under this paradigm, the Court was frequently called upon to determine whether a corporation's activities rendered it "present" in the forum. And this Court's cases made clear that a corporation could *not* be considered "present" based on the mere sale of the defendant's products in the state.

1. **Before *International Shoe*, there was never any settled tradition allowing general jurisdiction over non-domiciliary corporations.**

As an initial matter, it is significant that there was no "firmly established principle[] of personal jurisdiction in American tradition," *Burnham*, 495 U.S. at 610 (plurality opinion), allowing what would today be called general jurisdiction over foreign corporations "doing business" in a state. In this respect, corporations differed from individuals, as to whom it was established that in-state service did confer what amounted to general jurisdiction. *Id.* at 611-15.

The common-law rule deemed a corporation "present" only in its state of incorporation, and thus it could be sued only in that state. *See St. Clair v. Cox*, 106 U.S. 350, 357-58 (1882); *Bank of Augusta v.*

Earle, 38 U.S. 519, 588 (1839).[4] By the mid-1800s, aided by state statutes departing from this rule, courts began to permit suits where a foreign corporation conducted substantial business, if the suit arose out of that in-state business. *See, e.g.*, *Lafayette Ins. Co. v. French*, 59 U.S. 404, 407-09 (1855). These statutes primarily reflected the need to assert jurisdiction over corporations whose activities in a state gave rise to legal claims there. *See Developments in the Law State-Court Jurisdiction*, 73 Harv. L. Rev. 911, 919 (1960).

Accordingly, near the time of the Fourteenth Amendment's adoption, many courts found it "well settled . . . that no action *in personam* [could] be maintained against a foreign corporation, unless the contract sued on was made, or the injury complained of was suffered, in the State in which the action [was] brought." *Cent. R.R. & Banking Co. v. Carr*, 76 Ala. 388, 1884 WL 419, at *4 (1884); *see also* Edward Quinton Keasbey, *Jurisdiction Over Foreign Corporations*, 12 Harv. L. Rev. 1, 22 (1898).[5] By the

[4] *See also, e.g.*, *Middlebrooks v. Springfield Fire Ins. Co.*, 14 Conn. 301, 1841 WL 361, at *4-6 (1841); *Clarke v. N.J. Steam Nav. Co.*, 5 F. Cas. 974, 976 (C.C.R.I. 1841) (No. 2,859) (Story, J.); *Peckham v. Inhabitants of the N. Parish in Haverhill*, 33 Mass. (16 Pick.) 274, 286-87 (1834); *M'Queen v. Middletown Mfg. Co.*, 16 Johns. 5, 5 (N.Y. Sup. Ct. 1819); *see also* Edward Quinton Keasbey, *Jurisdiction Over Foreign Corporations*, 12 Harv. L. Rev. 1, 2 (1898); Joseph K. Angell & Samuel Ames, *A Treatise on the Law of Private Corporations Aggregate* 336 (2d ed. 1843).

[5] *See, e.g.*, *Aetna Ins. Co. v. Black*, 80 Ind. 513, 1881 WL 7163, at *3 (1881); *Bawknight v. Liverpool & London & Globe Ins. Co.*, 55 Ga. 194, 1875 WL 3197, at *2 (1875), *overruled by Reeves v. S. Ry. Co.*, 49 S.E. 674, 676 (Ga. 1905); *Sawyer v. N.*

twentieth century, however, disagreement had emerged, with several courts now taking the view that a corporation doing sufficient business in a state could be sued there on any cause of action. *See Tauza v. Susquehanna Coal Co.*, 115 N.E. 915, 917-18 (N.Y. 1917); *State-Court Jurisdiction*, *supra*, 73 Harv. L. Rev. at 921 (observing that "cases were divided" on this issue).

This Court, however, never resolved the issue. It expressly left the question open in *Philadelphia & Reading Railway Co. v. McKibbin*, 243 U.S. 264, 265 (1917), and several decisions affirmatively suggested that "doing business" in a state would *not* permit jurisdiction over causes of action arising elsewhere. For example, while it approved statutes deeming corporations doing business in a state to have implicitly "consented" to service of process on state officials, *see Ex parte Schollenberger*, 96 U.S. 369, 376 (1877), the Court twice held that this principle could not reach "causes of action arising in other states." *Simon v. S. Ry. Co.*, 236 U.S. 115, 130 (1915); *Old Wayne Mut. Life Ass'n v. McDonough*, 204 U.S. 8, 22 (1907).[6] Further, in *Louisville &*

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Am. Life Ins. Co., 46 Vt. 697, 1874 WL 6574, at *1 (1874); *Camden Rolling Mill Co. v. Swede Iron Co.*, 32 N.J.L. 15, 1866 WL 3638, at *2 (N.J. 1866); *Parke v. Commonwealth Ins. Co.*, 44 Pa. 422, 1863 WL 4820, at *1 (1863); *Merrill v. Knickerbocker Life Ins. Co. of N.Y.*, 4 Ky. L. Rptr. 729, 1883 WL 7123, at *1 (Ky. Super. Ct. 1883).

[6] By contrast, if a corporation had *expressly* consented to general jurisdiction through designation of an agent to receive service of process, the Court viewed that consent as

Nashville Railroad Co. v. Chatters, 279 U.S. 320 (1929), then-Associate Justice Stone summarized prior decisions as suggesting that a foreign corporation could not "be sued on transitory causes of action arising elsewhere which are unconnected with any corporate action by it within the jurisdiction." *Id.* at 325; *see also Robert Mitchell Furniture Co. v. Selden Breck Constr. Co.*, 257 U.S. 213, 216 (1921); Restatement (First) of Conflict of Laws § 92 cmt. c (1934).[7]

In short, this Court's pre-*International Shoe* cases "never openly espoused" the view that a foreign corporation's "presence" in the forum state could support general jurisdiction over the corporation, Philip B. Kurland, *The Supreme Court, the Due Process Clause and the In Personam Jurisdiction of State Courts*, 25 U. Chi. L. Rev. 569, 583 (1958), and

(continued...)

sufficient to satisfy due process. *Pa. Fire Ins. Co. of Phila. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93, 95 (1917).

[7] Chief Justice Stone's later observation on this topic in *International Shoe* that "there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify" jurisdiction over suits "arising from dealings entirely distinct from those activities," 326 U.S. at 318—highlights the paucity of support for that view in this Court's opinions. The three "instances" cited were *Tauza*, an opinion of the New York Court of Appeals; a "cf." citation to *St. Louis Southwestern Railway Co. v. Alexander*, 227 U.S. 218 (1913), which involved a case related to the defendant's in-state conduct, *see id.* at 224-25; and *Missouri, Kansas & Texas Railway Co. v. Reynolds*, 255 U.S. 565 (1921) (per curiam), a one-sentence opinion affirming a state decision "upon the authority of" *Alexander*.

at times questioned that view, *see Chatters*, 279 U.S. at 325. Thus, there was no "firmly established principle[]," *Burnham*, 495 U.S. at 610 (plurality opinion), that a foreign corporation's "doing business" in a state could subject it to jurisdiction on cases unrelated to that business.

2. Jurisdiction based on corporate "presence," even when the cause of action arose out of the defendant's forum contacts, required significant physical presence in the forum state.

At the same time, and leaving aside jurisdiction over out-of-state causes of action, until *International Shoe* *any* exercise of jurisdiction over an unconsenting foreign corporation required a significant degree of physical presence in the state. Thus, due process required that the corporation *both* be served with process in the forum and be "doing business within the state . . . in such manner . . . as to warrant the inference that it was present there." *Rosenberg*, 260 U.S. at 517. These requirements followed from the traditional principle that "a court simply could not exercise *in personam* jurisdiction over a nonresident who had not been personally served with process in the forum." *Burnham*, 495 U.S. at 616 (plurality opinion).[8]

[8] The Court sometimes justified jurisdiction on the theory that a foreign corporation doing business in a state "impliedly consented" to jurisdiction. *St. Clair*, 106 U.S. at 356. But this "implied consent," like corporate "presence," required a corporation to have significant physical presence in the state. *See id.* at 359 (finding it "essential" "that the corporation [was] engaged in business in the state").

State courts, therefore, "regarded [it] as settled . . . that if a foreign corporation . . . d[id] not do business, and ha[d] not any office or place of business in [the forum] state," the corporation, "[could not] be brought within the jurisdiction of [the state's courts]." *Camden Rolling Mill Co. v. Swede Iron Co.*, 32 N.J.L. 15, 1866 WL 3638, at *2 (N.J. 1866). This standard imposed a significant threshold before the corporation could be considered "present"; it did not permit jurisdiction to attach, for example, through "service upon an officer of a foreign corporation, when he happen[ed] to be temporarily in [the] state." Charles T. Boone, *A Manual of the Law Applicable to Corporations Generally* § 74 (1887); *see, e.g.*, *Camden*, 1866 WL 3638, at *3 ("[I]t is difficult to believe that it was the design to place within the jurisdiction of our courts, all the corporations of the world, merely from the fact that a director, clerk, or other subordinate officer happened to come upon the territory of the state.").[9]

After *Pennoyer*, this Court adopted the same rule that the actual physical presence of corporate agents in the state carrying on substantial corporate business there and service of process on them within the state was a *sine qua non* of the "presence" necessary to confer jurisdiction over a foreign corporation. *See, e.g.*, *McKibbin*, 243 U.S. at

[9] *See also, e.g.*, *Aldrich v. Anchor Coal & Dev. Co.*, 24 Or. 32, 33-35 (1893); *Midland Pac. Ry. Co. v. McDermid*, 91 Ill. 170, 1878 WL 10249, at *2 (1878); *Newell v. Great W. Ry. Co. of Can.*, 19 Mich. 336, 1869 WL 3648, at *5 (1869); *Latimer v. Union Pac. Ry.*, 43 Mo. 105, 1868 WL 4854, at *3-4 (1868); *Parke v. Commonwealth Ins. Co.*, 44 Pa. 422, 1863 WL 4820, at *1 (1863); *Libbey v. Hodgdon*, 9 N.H. 394, 1838 WL 1260, at *3 (1838).

265; *Rosenberg*, 260 U.S. at 517; *Riverside & Dan River Cotton Mills, Inc. v. Menefee*, 237 U.S. 189, 194 (1915); *Green v. Chi., Burlington & Quincy Ry. Co.*, 205 U.S. 530, 533-34 (1907); *Goldey v. Morning News of New Haven*, 156 U.S. 518, 522 (1895).

In *Rosenberg*, for example, the corporate president was served with process while in the state to make purchases for its out-of-state store. 260 U.S. at 517-18. The Court found it "clearly correct" that "[v]isits on such business, even if occurring at regular intervals, would not warrant the inference that the corporation was present within the jurisdiction of the state." *Id.*; *see People's Tobacco Co. v. Am. Tobacco Co.*, 246 U.S. 79, 87 (1918) (corporation was not "present" in Louisiana despite its "continued practice of advertising its wares in Louisiana, and sending its soliciting agents [there]").

Furthermore, of particular relevance, personal jurisdiction over an absent corporate defendant could not exist merely because its products were sold in the state. In *Consolidated Textile Corp. v. Gregory*, 289 U.S. 85 (1933), for example, the corporate defendant sold goods in Wisconsin through a subsidiary acting as its agent, and this Court rejected the notion that these in-state sales could suffice to establish that the defendant was "present" there. *Id.* at 88. The Court explained that it was necessary "that [the corporation be] carrying on business there," and "'the business must be of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the state or district where service is attempted.'" *Id.* (quoting *People's Tobacco*, 246 U.S. at 87). Because mere sales in the

state through a subsidiary did not meet these requirements, the defendant "was not present within the jurisdiction of Wisconsin as required." *Gregory*, 289 U.S. at 88.

Reflecting a similar view of what "presence" required was *Bank of America v. Whitney Central National Bank*, 261 U.S. 171 (1923), an opinion by Justice Brandeis holding that the defendant's transaction from out of state of considerable New York business could not overcome its lack of physical presence in the state:

> The Whitney Central had what would popularly be called a large New York business. The transactions were varied, important, and extensive. But it had no place of business in New York. None of its officers or employees was resident there. . . . The jurisdiction taken of foreign corporations . . . flows from the fact that the corporation itself does business in the state or district in such a manner and to such an extent that its actual presence there is established. That the defendant was not in New York, and hence was not found within the district, is clear.

Id. at 173.

And, in *McKibbin*, the Court held that jurisdiction was lacking over a railroad that "sen[t] into [New York], over connecting carriers, loaded freight cars," notwithstanding that tickets for carriage on its railroad were regularly sold in New York by connecting carriers. 243 U.S. at 266-67. The Court emphasized that "[n]o part of [the defendant's] railroad is situated within the State of New York [and it] has no dock, or freight or passenger ticket

office or any other office or any agent or property therein," *id.* at 266, and that if the regular sale of its tickets in the state sufficed "nearly every railroad company in the country would be 'doing business' in every State," *id.* at 268.

Lastly, the Court held that the presence of a corporate subsidiary marketing its parent's products could not establish that the parent was "present" in the state, even where "the defendant dominate[d] the [local] corporation, immediately and completely, and exerts its control both commercially and financially." *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 335 (1925); *see Gregory*, 289 U.S. at 88; *McKibbin*, 243 U.S. at 268 ("Nor would the fact . . . that 'subsidiary companies' did business within the state, warrant a finding that the defendant did business there."); *People's Tobacco*, 246 U.S. at 87 (same); *Peterson v. Chi., Rock Island, & Pac. R.R. Co.*, 205 U.S. 364, 391-92 (1907) (same).

In sum, the pre-*International Shoe* case law (1) provided no clear historical practice permitting a state to exercise general jurisdiction over a foreign corporation; (2) required significant physical presence in the state as a prerequisite for jurisdiction over a foreign corporation even with respect to in-state causes of action; (3) concluded that mere sales of a foreign corporation's products in a state were inadequate to establish the presence necessary for jurisdiction; and (4) held that the in-state presence of subsidiaries or affiliates did not amount to presence on the part of an out-of-state corporation.

3. *International Shoe* and its progeny confirm these principles.

International Shoe and its progeny reaffirm these established principles. *International Shoe* itself recognized that general jurisdiction over a foreign corporation can exist only when it is engaged in "continuous corporate operations *within a state*" that are "*so substantial and of such a nature* as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." 326 U.S. at 318 (emphasis added). And all three of the cases *International Shoe* cited as examples involved defendants who were operating an office within the forum, staffed with their own employees and agents. *See Seymour v. Parke, Davis & Co.*, 423 F.2d 584, 586 n.1 (1st Cir. 1970) (describing facts of the cases). Further, that *International Shoe* approved only the state's exercise of *specific* jurisdiction, 326 U.S. at 320, illustrates that the "substantial" "continuous corporate operations" necessary for *general* jurisdiction, *id.* at 318, must be at a higher level than the continuous employment of in-state salesmen and rental of business space at issue there, *id.* at 313-14.

The Court's cases after *International Shoe* provide further support for the historical principles. In *Perkins,* the corporate defendant's "president, while engaged in . . . business in Ohio, ha[d] been served with summons" in the state. 342 U.S. at 438. The defendant, which was incorporated in the Philippines, had "halted" all operations there after the Japanese invasion during World War II. *Id.* at 447. The president returned to Ohio, and ran the corporate operations from that state, which included keeping the corporate files, drafting its

correspondence, distributing its employees' pay, and holding board meetings. *Id.* at 447-48. Given these facts, "Ohio was the corporation's principal, if temporary, place of business." *Keeton*, 465 U.S. at 779 n.11 (discussing *Perkins*).

In *Helicopteros*, by contrast, plaintiffs (representatives of decedents who died in a helicopter accident in Peru) brought a Texas lawsuit against the Colombian corporation that had operated the crashed helicopter. 466 U.S. at 409-11. The defendant had purchased about 80% of its helicopter fleet in Texas, and regularly sent employees there for training. *Id.* at 411. Further, its CEO had visited the state to negotiate the contract under which the company had provided the helicopter involved in the accident. *Id.* These contacts were held insufficient for general jurisdiction, with the Court relying on *Rosenberg*'s holding that the "purchases and related trips . . . are not a sufficient basis for . . . jurisdiction." *Id.* at 417.

In addition, *Helicopteros* used language suggesting that general jurisdiction *requires* that a foreign corporation's presence rise to the high level of that found in *Perkins*. *Helicopteros* framed the relevant question as whether the defendant's contacts with Texas "constitute[d] the kind of continuous and systematic general business contacts the Court *found to exist* in *Perkins*," 466 U.S. at 416 (emphasis added), suggesting that *Perkins* in which the forum was the corporation's "principal . . . place of business," *Keeton*, 465 U.S. at 779 n.11 sets the general-jurisdiction floor.

Finally, *Keeton* further illustrates that the principles announced in cases like *Gregory* and *McKibbin* that the in-state sales of an absent

defendant's products do not suffice to establish the defendant's presence, *see Gregory*, 289 U.S. at 88; *McKibbin*, 243 U.S. at 266-68 remain controlling law for general jurisdiction. *Keeton*, which was decided just one month before *Helicopteros*, strongly suggested in dicta that "respondent's activities in the forum may not be so substantial as to support jurisdiction over a cause of action unrelated to those activities," 465 U.S. at 779, notwithstanding that the in-state "activities" "consist[ed] of the sale of some 10 to 15,000 copies of *Hustler* magazine in [the forum] State each month." *Id.* at 772. General jurisdiction thus may not exist even where the absent defendant makes its own in-state sales, let alone when the sales of the defendant's products are made by another.

In addition, *Keeton* reaffirmed the longstanding corporate-separateness principle, citing *Gregory* for the proposition that the actions of a subsidiary may not establish jurisdiction over its corporate parent, and noting that "[e]ach defendant's contacts with the forum State must be assessed individually." *Keeton*, 465 U.S. at 781 n.13.

In sum, neither historical practice nor the Court's modern general-jurisdiction case law applying it can be squared with the holding below that the mere distribution of a corporation's goods in the forum, unaccompanied by any physical presence of the corporation, can suffice for general jurisdiction.

II. GENERAL JURISDICTION BASED ON THE STREAM-OF-COMMERCE DISTRIBUTION OF A DEFENDANT'S PRODUCTS IN THE FORUM STATE EQUALLY OFFENDS MODERN DUE-PROCESS STANDARDS.

Aside from its inconsistency with historical standards, the rule adopted below equally violates "'traditional notions of fair play and substantial justice'" when measured against contemporary due-process standards. *Int'l Shoe*, 326 U.S. at 316 (quoting *Milliken*, 311 U.S. at 463).

As noted earlier, under the decision below, essentially universal jurisdiction would exist in every state's courts over every significant seller of goods, foreign or domestic. *International Shoe* and subsequent cases provide no support for such unconstrained general jurisdiction. To the contrary, *International Shoe* limits general jurisdiction to narrow circumstances indeed, it appears to require a considerably *greater* connection between the defendant and the forum than was necessary to establish "presence" prior to *International Shoe*. *Cf.* Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1143-44, 1178-79 (1966) (explaining that *International Shoe*'s approach and the growth of specific jurisdiction support a narrow scope for general jurisdiction).

In all events, general jurisdiction over a defendant with no physical presence in the forum let alone over a defendant whose only contacts consist of the mere stream-of-commerce distribution of its products there cannot be justified under *International Shoe*.

A. The Mere Distribution Of A Defendant's Products In A State Cannot Satisfy The Substantial Threshold Required For General Jurisdiction Under *International Shoe*.

The decision below dramatically departs from the modern due-process standards identified and applied by *International Shoe* and its progeny.

1. A state has no valid basis for exercising global authority over a defendant whose only connection with the state is that its products are distributed there.

The due-process restrictions on personal jurisdiction set forth in *International Shoe* "are a consequence of territorial limitations on the power of the respective States," and they protect a defendant against a state's "exercise of power over him" without legitimate basis. *Hanson v. Denckla*, 357 U.S. 235, 251 (1958). A state's judicial authority over non-resident defendants is therefore measured not merely by convenience, but by whether the state has a legitimate basis making its exercise of authority "reasonable, in the context of our federal system of government." *Int'l Shoe*, 326 U.S. at 317.

a. The limits on personal jurisdiction protect defendants against excessive assertions of state judicial authority, "ensur[ing] that the States[,] through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen*, 444 U.S. at 292. Thus, the central principle of personal jurisdiction is that a state "does not have jurisdiction in the absence of some reasonable basis for exercising it." Restatement (Second) of Conflict of Laws § 24 cmt. b (1971).

The necessary "reasonable basis" for jurisdiction must arise from either the state's authority over the conduct at issue or the state's authority over the defendant itself. In this respect, due-process limits on personal jurisdiction echo the due-process limits imposed elsewhere. For example, a state may of course regulate activities in or affecting the state, and may regulate out-of-state activities of its citizens, *see Skiriotes v. Florida*, 313 U.S. 69, 77 (1941); *cf. Blackmer v. United States*, 284 U.S. 421, 436 (1932), but it may not "reach[] beyond her borders to regulate a subject which was none of her concern," or "impos[e] . . . conditions upon [a party's] privilege of engaging in local business which would bring within the orbit of state power matters unrelated to any local interests." *Osborn v. Ozlin*, 310 U.S. 53, 62, 65 (1940); *see BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571 (1996); *cf. Healy v. Beer Inst.*, 491 U.S. 324, 336 (1989) ("[A] statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority.").

The due-process limits on jurisdiction and choice of law are by no means identical. *Cf. Hanson*, 357 U.S. at 254 ("The issue is personal jurisdiction, not choice of law."). But they both reflect the general principles limiting the scope of a state's sovereign authority, as well as the more specific proposition that such authority ordinarily does not extend to activities of non-residents that are unrelated to the state.

b. In specific-jurisdiction cases, any cause of action, by definition, "arise[s] out of or relate[s] to" the defendant's contacts with the state, *Helicopteros,*

466 U.S. at 414, and the state's legitimate authority over that purposeful conduct provides the necessary predicate for jurisdiction. Even these cases, however, weigh "the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." *Shaffer*, 433 U.S. at 204 (internal quotation marks omitted). There must be an adequate "relationship among the defendant, the forum, and the litigation" under this standard, *id.*, so that the state cannot be said to be "reach[ing] out beyond the limits imposed on [it]" by the Due Process Clause. *World-Wide Volkswagen*, 444 U.S. at 292.

c. For general jurisdiction, however, a different justification is necessary. Because such cases, by definition, do *not* arise out of or relate to contacts with the state, there is no "relationship among the defendant, the forum, *and the litigation*." *Shaffer*, 433 U.S. at 204 (emphasis added). Instead, the state's assertion of jurisdiction must be justified solely on the basis of its relationship with the defendant. To be sure, the state also has some interest in providing a forum for state-resident plaintiffs. But absent sufficient contacts between the defendant and the forum, the plaintiff's residence does not provide an independent basis for jurisdiction. *Kulko v. Superior Court*, 436 U.S. 84, 93-94 (1978); *see also Rush v. Savchuk*, 444 U.S. 320, 332 (1980) (rejecting test that made "plaintiff's contacts with the forum . . . decisive" for jurisdiction). The due-process right protects a defendant's "liberty interest," *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985), and thus it is the defendant's

contacts with the state that matter, not the plaintiff's. *Hanson*, 357 U.S. at 254.[10]

Because general jurisdiction must be justified solely by reference to the relationship between the state and the defendant, that relationship must be so significant "sufficiently substantial and of such a nature," *Perkins*, 342 U.S. at 447 as to give the state a basis for global judicial authority over *all* of the defendant's conduct, wherever it occurs. The only universally recognized basis for such plenary state authority over out-of-state conduct is the unique relationship between a state and its citizens or residents. *See Milliken*, 311 U.S. at 462-64 (upholding jurisdiction over absent citizen); *cf. Skiriotes*, 313 U.S. at 77 (state may regulate citizens' conduct "on the high seas"). This suggests that general jurisdiction should be available only with respect to defendants who are so closely tied to the state that the state "posses[es] equivalent authority to that which it possesses over its own citizens." Allan R. Stein, *Styles of Argument and Interstate Federalism in the Law of Personal Jurisdiction*, 65 Tex. L. Rev. 689, 726 (1987).[11]

[10] A further reason general jurisdiction cannot be justified by reference to the plaintiff's residence is that such jurisdiction, where permissible, is equally available to non-resident plaintiffs. *See Perkins*, 342 U.S. at 438 (permitting general jurisdiction in Ohio on behalf of "nonresident of Ohio").

[11] Indeed, the authors who coined the phrase "general jurisdiction" believed that it should be limited to a corporation's place of incorporation and principal place of business. *See* von Mehren & Trautman, *supra*, 79 Harv. L. Rev. at 1179. Others have similarly recognized that general jurisdiction is appropriate only with respect to state "insider[s]," with the

Be that as it may, this case does not require the Court to decide whether due-process principles limit general jurisdiction to a corporation's state of incorporation or principal place of business. This case involves a state's assertion of general jurisdiction over foreign corporations with no physical presence in the forum and whose only contacts with the forum result from the movement of their products through the stream of commerce. Such contacts come nowhere close to making a corporation the equivalent of an "insider" or domiciliary, *Milliken*, 311 U.S. at 463-64, over which the state may legitimately assert global authority.

d. This Court's general-jurisdiction case law supports this analysis. *Perkins*, the Court's only case since *International Shoe* to permit general jurisdiction over a corporation, involved a corporation with its "principal . . . place of business" in the forum state. *Keeton*, 465 U.S. at 779 n.11. *Helicopteros*, in turn, framed the due-process inquiry for general jurisdiction as whether a state's contacts with a corporation "constitute the kind of continuous and systematic general business contacts . . . *found to exist* in *Perkins*." 466 U.S. at 416 (emphasis added); *see* Restatement (Second) of Conflict of Laws § 47 cmt. e (citing *Perkins* as the standard for jurisdiction based on a corporation "doing business" in a state,

(continued...)

paradigm cases being "domicile, place of incorporation, and principal place of business." Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 Tex. L. Rev. 721, 728, 742 (1988).

and saying only that "[s]uch jurisdiction is particularly likely to exist in situations where the corporation's principal place of business is in the state"); 1 Robert C. Casad & William M. Richman, *Jurisdiction in Civil Actions* § 2-5[3][a] (3d ed. 2004) (courts usually require "at least, that defendant have an office in the forum" to sustain general jurisdiction under the continuous and systematic contacts standard). None of these cases suggests that a legitimate state interest in general jurisdiction over a non-resident defendant can be based on the mere stream-of-commerce distribution of that defendant's products.

e. Finally, additional confirmation comes from cases under the Commerce Clause, which establish that a defendant's engagement in interstate commerce within a state and distribution of products through the stream of commerce is necessarily interstate commerce may not be leveraged by the state into a basis for general jurisdiction over the defendant. In particular, this Court has held that a state may not condition such interstate commerce on consent "to the general jurisdiction of [the state's] courts over transactions in which [the state] ha[s] no interest." *Bendix Autolite Corp. v. Midwesco Enters., Inc.*, 486 U.S. 888, 895 (1988); *see also Davis v. Farmers' Co-Op. Equity Co.*, 262 U.S. 312, 315-17 (1923). Such compelled consent constitutes "an unreasonable burden on commerce," *Bendix*, 486 U.S. at 895, as North Carolina's own statutes implicitly recognize. *See* N.C. Gen. Stat. § 55-15-01(b)(8) (exempting from North Carolina's business-registration requirements corporations "[t]ransacting business in interstate commerce"); *see also* Restatement (Second) of Conflict of Laws § 47

cmt. h; *cf. Simon*, 236 U.S. at 130-32; *Old Wayne*, 204 U.S. at 22-23. Likewise, a state may not "require a foreign corporation to qualify to do business" in the state as a condition of engaging in interstate commerce within the state. *Allenberg Cotton Co. v. Pittman*, 419 U.S. 20, 32-34 (1974).

In short, if a corporation's engagement in interstate commerce within a state does not permit the state to require *consent* to general jurisdiction, it necessarily follows that mere engagement in interstate commerce equally cannot provide a valid basis for exercising general jurisdiction without need of consent.

2. The novel basis of jurisdiction adopted below violates the "reasonable anticipation" prong of personal-jurisdiction analysis.

In determining the validity of a state's exercise of jurisdiction, the Court has repeatedly asked whether "the defendant's conduct and connection with the forum State are such that he should *reasonably anticipate* being haled into court there." *World-Wide Volkswagen*, 444 U.S. at 297 (emphasis added); *see also Kulko*, 436 U.S. at 97-98.

In light of the long-established limits on general jurisdiction and the unprecedented nature of the basis for jurisdiction adopted below no corporation could reasonably "have anticipated being haled before a [state] court" on out-of-state causes of action, *Kulko*, 436 U.S. at 97-98 (internal quotation marks omitted), in a state in which it has never had any physical presence, simply because its products were distributed there. As Justice Brennan has explained, deeply rooted practice is highly relevant to the

"reasonable expectations" of defendants. *Burnham*, 495 U.S. at 637.

This point is particularly striking with respect to the stream-of-commerce basis of the decision below. Prior to this case, at least since *Helicopteros*, no reported appellate decision let alone any of the decisions of this Court had held that a manufacturer's mere participation in the stream of commerce could create general jurisdiction wherever the manufacturer's products were distributed. To the contrary, courts have repeatedly indicated that "[i]njecting a product, even in substantial volume, into a forum's 'stream of commerce,' without more, does not support general jurisdiction." *Jackson v. Tanfoglio Giuseppe, S.R.L.*, 615 F.3d 579, 584 (5th Cir. 2010); *see, e.g., D'Jamoos ex rel. Estate of Weingeroff v. Pilatus Aircraft Ltd.*, 566 F.3d 94, 106 (3d Cir. 2009); *Dever v. Hentzen Coatings, Inc.*, 380 F.3d 1070, 1075 (8th Cir. 2004); *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 778 (7th Cir. 2003); *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 375-76 (5th Cir. 1987); *see also Spir Star AG v. Kimich*, 310 S.W.3d 868, 874 (Tex. 2010); *Merriman v. Crompton Corp.*, 146 P.3d 162, 185 (Kan. 2006). Indeed, this Court has yet to resolve whether participation in the stream of commerce, without more, even satisfies the lesser showing required for *specific* jurisdiction. *See Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 112-13 (1987) (O'Connor, J., plurality opinion).

In addition, the concern for reasonable expectations makes particularly problematic the court's suggestion below in rejecting a bright-line rule against basing general jurisdiction on stream-of-

commerce contacts that jurisdiction must depend upon a standardless assessment of "the extent to which [Petitioners'] products were, in fact, distributed in North Carolina markets." Pet. App. 28a. To be sure, in the specific-jurisdiction context, the Court has at times eschewed "clear-cut jurisdictional rules." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 486 & n.29 (1985). However, it has insisted on others, such as the rule that there can be no jurisdiction absent "purposeful availment" by the defendant. *Id.* at 475 (internal quotation marks omitted).

Moreover, unlike specific jurisdiction which inherently must adapt to the permutations raised by varying claims general jurisdiction, which does not vary from claim to claim, is more susceptible to precise rules. Indeed, one of its primary functions is to provide "a certain and predictable place where a person can be reached by those having claims against him." von Mehren & Trautman, *supra*, 79 Harv. L. Rev. at 1137. In addition, it places a "significant[ly]" greater "burden" on defendants than specific jurisdiction, *Bendix*, 486 U.S. at 893, creating a greater need for "predictability" as to "where [their] conduct will and will not render them liable to suit" on any cause of action. *World-Wide Volkswagen*, 444 U.S. at 297. "Simple jurisdictional rules . . . promote [that] greater predictability." *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1193 (2010); *see also Burnham*, 495 U.S. at 626 (plurality opinion) (advocating for bright-line rule in context of general jurisdiction).

Accordingly, the established concern for reasonable expectations weighs strongly against the decision below.

3. The limited "benefits" provided by North Carolina cannot justify the disproportionate burden of general jurisdiction in the state.

The assertion of jurisdiction on the basis adopted below is equally invalid when viewed through the lens of this Court's cases analyzing assertions of jurisdiction in light of "reciprocal" benefits that the state provides the defendant. *E.g.*, *Milliken*, 311 U.S. at 463. Thus, "to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state," which in turn "may give rise to obligations." *Int'l Shoe*, 326 U.S. at 319. Under this reasoning, "requir[ing] the corporation to respond to a suit brought to enforce" "obligations [that] *arise out of or are connected with [those] activities*" "can, in most instances, hardly be said to be undue." *Id.* (emphasis added). In other words, the benefits provided to a corporation that conducts business activities in a state make it fair for the state's courts to exercise authority over the corporation in disputes arising from those activities.

By contrast, an assertion of global authority over all of a defendant's conduct simply because its products have reached the state through the stream of commerce exceeds any reasonable notion of reciprocity. Indeed, to date, this Court has found the benefits that a state provides to justify general jurisdiction as a "reciprocal dut[y]" only for those domiciled in the state. *Milliken*, 311 U.S. at 463. That follows because the state "accords [its citizens] privileges and affords protection to [them] and [their] property by virtue of [their] domicile." *Id.* By

comparison, for a state to impose global amenability to jurisdiction in exchange for the mere distribution of products in the state would, as Justice Scalia suggested in a related context, not even "survive the 'unconscionability' provision of the Uniform Commercial Code." *Burnham*, 495 U.S. at 623 (plurality opinion). The limited benefits provided by the state fall far short of what would be necessary to "make fair the assertion of [the] State's judicial jurisdiction" over entirely unrelated causes of action. *Kulko*, 436 U.S. at 101.

4. The presumptive inconvenience of the forum further weighs against North Carolina's claim to general jurisdiction over Petitioners.

Nor can the decision below satisfy any convenience rationale. Although mere convenience for a defendant is not enough to justify an otherwise improper assertion of jurisdiction because due-process limits on jurisdiction represent "more than a guarantee of immunity from inconvenient or distant litigation," *Hanson*, 357 U.S. at 251 unjustified *in*convenience to a defendant may defeat jurisdiction. *See World-Wide Volkswagen*, 444 U.S. at 292. As such, "[a]n 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant" to whether it is "reasonable . . . to require the corporation to defend the particular suit" in the state in which it is brought. *Int'l Shoe*, 326 U.S. at 317.

Thus, one justification that has been offered for general jurisdiction in fora in which the defendant has a significant physical presence is that a

defendant with that presence may be presumed able to defend itself there without great expense or hardship. *See* Lea Brilmayer et al., *A General Look at General Jurisdiction*, 66 Tex. L. Rev. 721, 741 (1988). The rule adopted below, however, vitiates this rationale by extending general jurisdiction to states in which the defendant has *no* physical presence, thereby subjecting the defendant to suit on any and all claims in a state in which it is presumptively *in*convenient to defend and further highlighting the due-process deficiencies of that rule.

5. The consequences of the rule endorsed below demonstrate that jurisdiction on this basis is not "reasonable, in the context of our federal system of government."

The extraordinary consequences of the rule adopted below illustrate that rule's dramatic inconsistency with *International Shoe*'s goal of ensuring that assertions of jurisdiction be limited to those "reasonable, in the context of our federal system of government." 326 U.S. at 317.

a. Under the approach followed below allowing general jurisdiction wherever a manufacturer's products are distributed there would be virtually universal jurisdiction in every state's courts over every significant foreign or domestic manufacturer. *Cf. World-Wide Volkswagen*, 444 U.S. at 296 (rejecting rule under which "[e]very seller of chattels would in effect appoint the chattel his agent for service of process"); *McKibbin*, 243 U.S. at 268 (rejecting approach under which "nearly every railroad company in the country would be 'doing business' in every state").

Moreover, because general jurisdiction is *general*, it exists without regard to the nature of the claim. Thus, this jurisdiction would be available not only in every state, but "in *any* litigation arising out of *any* transaction or occurrence taking place *anywhere* in the world." *Purdue*, 338 F.3d at 787. For example, North Carolina residents who took a job with Goodyear Turkey while traveling overseas could sue over their employment in any forum that receives Goodyear Turkey tires through the stream of commerce. And any other claim, regardless of where it arose and how unconnected to the forum or even to the United States as a whole, could likewise be filed in any state in the Union.

A more open invitation to forum shopping would be difficult to imagine. And the availability of such unlimited choice of forum is problematic for at least two reasons. First, by funneling cases to the most plaintiff-friendly forum rather than to a forum connected with the dispute, the rule endorsed by the court below defeats "the interstate judicial system's interest in obtaining the most efficient resolution of controversies." *World-Wide Volkswagen*, 444 U.S. at 292. Second, and even more troubling, it creates endemic procedural unfairness, in part "because [the] final outcomes [of cases] often turn on the choice-of-law rules that the forum applies." Linda J. Silberman, *Reflections on* Burnham v. Superior Court*: Toward Presumptive Rules of Jurisdiction and Implications for Choice of Law*, 22 Rutgers L.J. 569, 584 (1991). In addition, "[i]n international cases . . . the use of American discovery devices, the potential of an American jury award, and the availability of contingent fees" provide powerful

incentives for plaintiffs to seek out an American forum. *Id.* at 584 n.75.

Both this Court and Congress have expressed concern over such forum shopping. This Court has repeatedly recognized the benefit of rules that "serve[] the important purpose of preventing forum shopping," and the unjust "inconvenience" and "expense" that result from it. *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004); *see Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508-09 (2001). And Congress, for example, passed the Class Action Fairness Act in part because of the opportunities for forum shopping that arose with class actions in state courts. S. Rep. No. 109-14, at 22 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3, 23; *see* 28 U.S.C. § 1332(d).

A rule permitting general jurisdiction wherever a corporation's products are found, and the resulting opportunities for "rampant," fifty-state "forum shopping" sprees, *Rumsfeld*, 542 U.S. at 447, are manifestly at cross purposes with the "fair and orderly administration of the laws which it was the purpose of the due process clause to insure." *Int'l Shoe*, 326 U.S. at 319.

b. The expansive general jurisdiction adopted below is also likely to significantly deter interstate and foreign commerce, because "predicating jurisdiction upon interstate conduct provides disincentives to engage in it," by "requiring the corporate defendant to litigate claims unrelated to its forum activities in distant and perhaps unpredictable forums." Brilmayer, *supra*, 66 Tex. L. Rev. at 743, 746. As noted earlier, this Court has expressly recognized the burden on commerce created by such

exercises of jurisdiction based on activity in interstate commerce. *E.g.*, *Bendix*, 486 U.S. at 893.

This burden is potentially even greater as applied to international commerce. Many foreign corporations view the potential for liability in the American legal system as a considerable deterrent, taking the view that "[a]s a moth is drawn to the light, so is a litigant drawn to the United States. If he can only get his case into their courts, he stands to win a fortune." *Smith Kline & French Labs., Ltd. v. Bloch*, [1984] E.C.C. 103, 104 (C.A. 1982) (Denning, M.R.); *see also* Silberman, *supra*, 22 Rutgers L.J. at 584 n.75. Whatever the underlying merits of this view, its potential effect on commerce is undeniable. As the Solicitor General noted in an *amicus* brief in *Helicopteros*, citing "the critical importance of foreign trade to our national economy," a "foreign firm that finds itself subject to suit in a state court on an unrelated cause of action" based on insubstantial contacts with the forum "may well find it more expedient to do its foreign trading with firms in other countries." Brief for the United States at 10, *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984) (No. 82-1127).

c. Finally, while perhaps obvious, it should not be overlooked that a system of effective universal jurisdiction over manufacturers would be a fundamental departure from the traditional premise that "state lines" are *not* "irrelevant for jurisdictional purposes," and that personal jurisdiction restrictions preserve a federal structure in which "[t]he sovereignty of each State, in turn, implie[s] a limitation on the sovereignty of all of its sister States." *World-Wide Volkswagen*, 444 U.S. at 293.

The brave new jurisdictional world portended by the decision below diverges dramatically from the traditional "federal system," 326 U.S. at 317, of limited state jurisdiction that *International Shoe* contemplates.

6. The reasoning of the decision below is fundamentally flawed.

In addition to the deficiencies already described, the decision below suffers from two further flaws.

a. *First*, the reasoning below was based on a mistaken understanding of the governing legal standard. The court repeatedly framed that standard as requiring only a showing that Petitioners' contacts with North Carolina were "continuous and systematic," Pet. App. 13a, 21a, 26a, thereby omitting the critical requirements (1) that general jurisdiction be based on corporate activities *within* the state, and (2) that such activities be not only "continuous and systematic," but "so substantial, and of such a nature" as to justify general jurisdiction.

International Shoe itself indicated that general jurisdiction required "*substantial*" "continuous corporate operations *within* a state." 326 U.S. at 318 (emphasis added). Indeed, it used the "continuous and systematic" language employed by the decision below to describe the contacts that met the very different test for specific jurisdiction, *id.* at 317, necessarily suggesting that general jurisdiction required something more.

Similarly, *Perkins* did not suggest that "continuous and systematic" contacts alone would suffice. Rather, it adopted *International Shoe*'s focus on the substantiality of in-state activities verbatim, noting that general jurisdiction required corporate

operations "'so substantial and of such a nature'" as to justify a state's global adjudicative power. *Perkins*, 342 U.S. at 446 (quoting *Int'l Shoe*, 326 U.S. at 318); *see Perkins*, 342 U.S. at 447. And *Helicopteros* indicated that not just any "continuous and systematic" contacts would do. Rather, the necessary corporate activity must be such as "the Court found to exist in *Perkins*." *Helicopteros*, 466 U.S. at 416.

Further, the Court in *Keeton* suggested in dicta that thousands of monthly sales in a forum would not suffice for general jurisdiction, 465 U.S. at 772, 779-80, even though such sales were most certainly "continuous and systematic" in the way that the court below used that phrase. Pet. App. 13a, 21a, 26a. In short, the court below opted for a general-jurisdiction test that does not adhere to this Court's demanding standards since *International Shoe*.

b. *Second*, this Court's stream-of-commerce cases themselves defeat the purpose to which the court below sought to put them. As an initial matter, those decisions illustrate that the attenuated nature of stream-of-commerce contacts place even *specific* jurisdiction under such a theory at the outer limits of due process. *Compare Asahi*, 480 U.S. at 112-13 (plurality opinion), *with id.* at 121 (Brennan, J., concurring in judgment). Such inherently attenuated contacts cannot establish the far more substantial connection with the forum required for general jurisdiction.

In addition, as confirmed by *World-Wide Volkswagen* the case from which this Court's stream-of-commerce jurisprudence emerged the theory is necessarily limited to specific jurisdiction.

There, plaintiffs injured in a car accident in Oklahoma brought a suit in that state against the New York retailer that sold them the car and its distributor. 444 U.S. at 288. The suit arose out of the defendants' only state contact the "fortuitous circumstance" that the car they sold "happened to suffer an accident while passing through [the state]." *Id.* at 295. The Court found this contact insufficient because the plaintiffs had taken the car to Oklahoma and the defendants had not purposefully availed themselves of that forum. *Id.* at 298-99. In dicta, however, it set forth the classic statement of the stream-of-commerce approach for proving purposeful availment:

> Hence if the *sale of a product* of a manufacturer. . . arises from the efforts of the manufacturer . . . to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise *has there been the source of injury* to its owners or to others.

Id. at 297 (emphasis added).

This reasoning simply does not apply to the assertion of general jurisdiction, because the key to the reasoning is the occurrence of *injury arising out of the distribution of the defendant's product in the forum state.* Where there is no such in-state injury as here, or in any other case of general jurisdiction the entire basis of jurisdiction under this theory disappears.

In sum, the due-process principles established by *International Shoe* and its progeny preclude a state from exercising general jurisdiction over a defendant

who has no physical presence in the state, and, *a fortiori*, from exercising general jurisdiction based on contacts that occur solely through the stream of commerce

B. Even If General Jurisdiction Could Be Premised On Stream-Of-Commerce Contacts, Petitioners' Connection With North Carolina Falls Short Of The Constitutional Minimum.

Even assuming *arguendo* the possibility of circumstances in which general jurisdiction over a defendant may be satisfied through stream-of-commerce contacts, this is not such a case.

1. Although this Court in *Asahi* evenly divided over what a plaintiff must prove to establish "purposeful availment" under a stream-of-commerce theory, at least eight Justices indicated that this approach required, at a minimum, a showing that the defendant knew its products were being distributed in the forum state. *See Asahi*, 480 U.S. at 111-12 (plurality opinion) (siding with courts that "have understood the Due Process Clause to require something more than that the defendant was aware of its product's entry into the forum State"); *id.* at 117 (Brennan, J., concurring in the judgment) (sufficient if defendant "is aware that the final product is being marketed in the forum State").

Respondents did not even make this minimal showing. The evidence indicates only that Petitioners sold some of their tires to an affiliate in Europe; that The Goodyear Tire & Rubber Company purchased a small percentage of those tires from the European affiliate; and that some of the tires thus obtained were distributed to independent dealers in

North Carolina. JA 243-44, 256-60, 293-94. No evidence suggests that Petitioners were aware of the subsequent destinations of the tires that they sold to the European affiliate, let alone that some of the tires ended up in North Carolina.

The court below apparently thought this knowledge requirement unnecessary, suggesting that jurisdiction existed because Petitioners "knew or *should have known*" that their tires were sold in North Carolina. Pet. App. 27a (emphasis added); *see* Pet. App. 33a. That holding which transforms the purposeful-availment test's intent requirement into one commonly used as a negligence standard departs from the view of the Court in *Asahi*. *See* 480 U.S. at 111-12 (plurality opinion); *id.* at 117 (Brennan, J. concurring in the judgment). On these facts, Petitioners cannot be said to have availed themselves of the North Carolina forum to the extent necessary to satisfy stream-of-commerce principles.

2. Furthermore, that lack of knowledge aside, Petitioners' mere placement of their tires into the stream of commerce fails to satisfy the standard set forth in Justice O'Connor's plurality opinion in *Asahi*, which Petitioners submit is the correct one.

Under that approach, a plaintiff must prove not only the defendant's knowledge that its products will be distributed in the forum, but also "[a]dditional conduct" showing that "*the defendant purposefully directed [its conduct] toward the forum State.*" *Asahi*, 480 U.S. at 112 (plurality opinion). No such "[a]dditional conduct" exists here. *Id.* As the North Carolina Court of Appeals found, the record is "devoid of evidence that [Petitioners] took any affirmative action to cause tires which they had

manufactured to be shipped to North Carolina." Pet. App. 22a. Petitioners did not "advertis[e]" in North Carolina, "establish[] channels for providing regular advice to customers" in North Carolina, or "market[] [their tires] through a distributor who has agreed to serve as the sales agent [there]." *Asahi*, 480 U.S. at 112 (plurality opinion); JA 155-56, 165-66, 184-85.

Respondents sought to satisfy the "purposeful availment" requirement below by arguing that the specific tire involved in the French accident bore English markings, including U.S. Department of Transportation markings. JA 478-79. But the markings in no way suggest that the tires were specifically designed for the United States, let alone for North Carolina. Many tires designed for other markets contain such markings (after all, the markings in this case were on a tire sold in Europe, JA 142), because those markings may satisfy overlapping standards of U.S. regulators and those of European, Asian, South American, or other standards-setters. *See, e.g.*, Motor Vehicle Tire Safety Regulations, SOR/95-148, § 8 (Can.) (expressly requiring the same tire identification as well as certain other markings prescribed by U.S. regulators).

Indeed, only a small portion of Petitioners' tires has been distributed in the United States precisely because Petitioners do not design them for U.S. markets. JA 229. "[T]he constructions and materials and compounding are different" in Europe "than what [domestic Goodyear manufacturing] would utilize in the States." JA 235. And it is clear that the type of tire at issue in this case was not distributed in North Carolina. JA 237-40. In short, there is no

basis for any conclusion that Petitioners purposefully availed themselves of North Carolina

3. Finally, even if Petitioners had met the lower level of purposeful availment required for specific jurisdiction, they still lacked the "substantial," *Int'l Shoe*, 326 U.S. at 318, "continuous and systematic," *Helicopteros*, 466 U.S. at 416, contacts necessary for general jurisdiction. This Court has already suggested that thousands of monthly sales in a forum state alone "may not be so substantial as to support jurisdiction over a cause of action unrelated to those activities." *Keeton*, 465 U.S. at 779. There is no reason the conclusion should be any different here.

C. In The Alternative, The Assertion Of General Jurisdiction Over Petitioners Is Unconstitutional Under *Asahi*'s "Reasonableness" Prong.

The decision below also must be reversed under the separate prong of *Asahi* addressing whether the assertion of jurisdiction, even where the threshold level of contacts is satisfied, is reasonable under the facts of the particular case.[12] 480 U.S. at 113. The factors that led eight Justices to agree that the assertion of jurisdiction in *Asahi* was unreasonable require the same conclusion here.

[12] Although *Asahi* applied this "reasonableness" step in cases invoking specific jurisdiction, several lower courts have recognized that it applies for determining whether a state may assert general jurisdiction over a defendant. *See* 4 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1067.5, at 523 (3d ed. 2002) (noting that "[a] number of . . . federal courts" "have held that the fair play and substantial justice factors are applicable to questions of general, as well as specific, jurisdiction").

1. As noted in *Asahi*, the "unique burden[]" on a defendant who must not only "traverse the distance between [its overseas] headquarters" and the forum, but also submit to "a foreign nation's judicial system" is "severe," and "should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." 480 U.S. at 114. That burden is little different here.

2. The interests of North Carolina in this case are also less than those of California in *Asahi*. In that case, this Court recognized (although it downplayed) the pertinence of California's interest in regulating the safety of products sold in the state, and that "[t]he possibility of being haled into a California court as a result of an accident involving Asahi's components undoubtedly creates an additional deterrent to the manufacture of unsafe components." *Id.* at 115. This case, by contrast, involves a product that was never sold in North Carolina, and there is no substantial North Carolina interest in regulating the safety of products that are not distributed in the state. *See supra* Part II.A.1.

To be sure, unlike in *Asahi*, this case involves plaintiffs who are residents of the forum state and therefore have an interest in proceeding there. But even when plaintiffs were harmed by the defendant's conduct in their home forum, courts have suggested that "[a] mere preference on the part of the plaintiff for its home forum does not affect the balancing." *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1490 (9th Cir. 1993). That is all the more true in this case because Respondents' decedents voluntarily traveled to, and suffered injury in, a different forum. JA 122-27; *cf. Hanson*, 357 U.S. at 253 (The

"unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State."). And they have not shown that they could not seek suitable relief in France or any other forum more closely connected to their injury.

3. *Asahi* also considered "the interstate [and international] judicial system's interest in obtaining the most efficient resolution of controversies." 480 U.S. at 113 (internal quotation marks omitted); *see id.* at 115. It is surely relevant that this case unlike *Asahi*, which arose out of a California accident focuses on a tire that was manufactured in Turkey and involved in an accident in France. That much of the relevant evidence is likely to be located overseas is highly pertinent. *See Pac. Atl. Trading Co. v. M/V Main Express*, 758 F.2d 1325, 1331 (9th Cir. 1985) ("The site where the injury occurred and where evidence is located usually will be the most efficient forum."). Indeed, this sort of inefficiency is likely to be an endemic problem if manufacturers are routinely subject to general jurisdiction wherever their products are distributed. Unlike specific jurisdiction, which is inherently limited to states connected to the controversy, broad assertions of general jurisdiction will lead many plaintiffs to seek whichever forum provides the greatest litigation advantages, without regard to the forum's connection to the dispute and the efficiency that results from such a connection.

4. The Court also considers "the procedural and substantive policies of other *nations*" and "the Federal interest in [the] Government's foreign relations policies," both of which counsel "an

unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State." *Asahi*, 480 U.S. at 115. As a result of these factors, "'[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.'" *Id.* (quoting *United States v. First Nat'l City Bank*, 379 U.S. 378, 404 (1965) (Harlan, J., dissenting)).

This is particularly true in general-jurisdiction cases, as many foreign nations view the exercise of such jurisdiction as exorbitant in all but limited circumstances. For example, European Union laws suggest that a corporation may be sued on any cause of action only in its domicile, which is defined in terms analogous to its place of incorporation or principal place of business. *See* Council Regulation 44/2001, 2001 O.J. (L 12), Articles 2(1), 60(1) (Dec. 22, 2000).[13] Allowing the exercise of overreaching state assertions of general jurisdiction raises the risk of retaliation abroad against U.S. companies and threatens to interfere with the federal government's conduct of foreign relations. Indeed, according to the U.S. Department of State, the United States lacks international agreements on the reciprocal

[13] *See* Jens Dammann, *Adjudicative Jurisdiction and the Market for Corporate Charters*, 82 Tul. L. Rev. 1869, 1873 (2008) (noting that European corporations may be sued on any cause of action in their domicile or "general forum"); Nicola M.C.P. Jägers & Marie-José van der Heijden, *Corporate Human Rights Violations: The Feasibility of Civil Recourse in the Netherlands*, 33 Brook. J. Int'l L. 833, 845 (2008) (noting that the "*forum rei* principle" is "the controlling jurisdictional principle in most European countries").

recognition of civil judgments partially because of other countries' concerns about what they view as excessive instances of "extraterritorial jurisdiction asserted by courts in the United States." U.S. Dep't of State, Enforcement of Judgments, *available at* http://travel.state.gov/law/judicial/judicial_691.html (last visited Nov. 11, 2010).

5. Finally, assertions of jurisdiction like the one in this case also threaten interstate "substantive . . . policies," *Asahi*, 480 U.S. at 113 (internal quotation marks omitted), by deterring interstate and international commerce. If a corporation cannot engage in interstate or international commerce without subjecting itself to general jurisdiction in each state where its products are sold, the inevitable result is to "provide[] disincentives to engage in" such commerce. Brilmayer, *supra*, 66 Tex. L. Rev. at 743. That is especially problematic "in general jurisdiction cases," like this one, "because they affect innocent conduct, not conduct that gives rise to the litigation and that the state legitimately may seek to discourage." *Id.*

III. RESPONDENTS CANNOT SALVAGE THE JUDGMENT BELOW BY SHIFTING TO A SPECIFIC-JURISDICTION THEORY.

Respondents' Brief in Opposition to certiorari which claimed that "there is a very significant nexus between the contacts with North Carolina and the cause of action" suggested that Respondents may attempt to shift to a theory of specific jurisdiction in this Court. Opp. at 11. For three reasons, they may not do so.

First, Respondents waived any reliance on specific jurisdiction because they conceded below that they

must establish general jurisdiction. Specifically, Respondents agreed that Petitioners' "contacts [did] not directly relate to the event giving rise to the cause of action" and that they were "alleg[ing] that general jurisdiction" existed. JA 472. Not surprisingly, the court below held that "[t]he present dispute is not related to, nor did it arise from, Defendants' contacts with North Carolina," and that Respondents must show that general jurisdiction exists. Pet. App. 12a-13a. They should not be able to argue the opposite in this Court. *Sprietsma v. Mercury Marine*, 537 U.S. 51, 56 n.4 (2002) (finding that because an "argument was not raised below, it [was] waived"); *United States v. Alvarez-Sanchez*, 511 U.S. 350, 360 n.5 (1994) (same).

Second, Respondents had good reasons to concede that they must satisfy the test for general jurisdiction, because their claims do "not aris[e] out of or relate[] to [Petitioners'] contacts with the forum," as required for specific jurisdiction. *Helicopteros*, 466 U.S. at 414 n.9. Petitioners' only relationship with North Carolina is the distribution there of a limited number of tires, and it is undisputed that those tires had nothing to do with the bus accident in France at issue here. This Court has never decided whether there is a "distinction between controversies that 'relate to' a defendant's contacts with a forum and those that 'arise out of' such contact." *Id.* at 415 n.10; *cf. Burnham*, 495 U.S. at 610 (plurality opinion) (describing specific jurisdiction as about "suits *arising out of* the absent defendant's contacts with the State" (emphasis added)). But there is no plausible theory under which the claim in this case could be said to "arise out of or relate to" Petitioners' North Carolina contacts.

In particular, despite a lack of consensus in lower courts on the definition of "arising out of or related to," even "the broadest test" requires "but for" causation, i.e., that "the plaintiff's claim would not have arisen in the absence of the defendant's contacts" with the forum. 16 Moore's Federal Practice § 108.42[7][b] (3d ed. 2010); *see Ballard v. Savage*, 65 F.3d 1495, 1500 (9th Cir. 1995); *Lanier v. Am. Bd. of Endodontics*, 843 F.2d 901, 908-09 (6th Cir. 1988). And even this test which has been described as "vastly overinclusive," *O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 322 (3d Cir. 2007) would not be satisfied here. There is no theory on which Petitioners' contacts with North Carolina were a "but for" cause of the accident in France.

A fortiori, under the more restrictive tests of "arising out of or related to" such as this Court's suggestion that specific jurisdiction can be appropriate when a defendant's forum contacts are "related to the operative facts" of the action, *Rush*, 444 U.S. at 329 there is no specific jurisdiction here. The distribution of Petitioners' tires in North Carolina has no bearing on the "operative facts" of Respondents' claims, all of which relate to a European accident involving a tire designed and manufactured overseas.

Respondents' Brief in Opposition nonetheless suggests that the occurrence of the injury in France rather than North Carolina was mere happenstance, and that it should be sufficient that the claim grew out of the same product that was also sold in North Carolina. Opp. at 17. As a factual matter, however, it was *not* the same product, because it is undisputed

that the type of tire at issue in this litigation was not distributed in North Carolina. JA 237-40. As a legal matter, moreover, there is no authority for the notion that the mere fact that a claim arises from foreign conduct *similar* to the defendant's forum state conduct is sufficient to satisfy the "arises out of or relates to" requirement.[14]

Third, even if Respondents' causes of action could be said to relate to the distribution of Petitioners' tires through the stream of commerce in North Carolina, there would be no specific jurisdiction because the requirements of the stream-of-commerce theory are not satisfied here. As detailed earlier, *see supra* Part II.B, Respondents failed to proffer evidence that Petitioners even knew their tires were distributed in North Carolina, and failed to identify a cognizable "plus factor" that would turn such mere knowledge into purposeful targeting of North Carolina as required by Justice O'Connor's opinion in *Asahi*. 480 U.S. at 112 (plurality opinion).

Even under Justice Brennan's more expansive approach in *Asahi*, Respondents cannot prove purposeful availment. For one thing, his opinion requires that the "product" at issue be "regularly *sold*" in the forum, *id.* at 119 (Brennan, J., concurring in judgment), and here the type of tire at issue was *never* sold in North Carolina. For another thing, the

[14] This novel "similarity" theory of specific jurisdiction amounts to the view that in *Keeton* the defendant's sale of magazines in New Hampshire would have been sufficient to create New Hampshire jurisdiction even over an alleged libel published by the defendant in a different magazine sold only in Europe. *Cf.* 465 U.S. at 772.

injury occurred in France, not North Carolina. JA 126-27. Petitioners' "allegedly defective merchandise," therefore, "has [not] . . . been the source of injury" in the forum state. *World-Wide Volkswagen*, 444 U.S. at 297. Respondents thus have not proved either of the two elements that even Justice Brennan's *Asahi* opinion would require for establishing specific jurisdiction through the stream of commerce.

CONCLUSION

The judgment of the North Carolina Court of Appeals should be reversed.

Respectfully submitted,

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RESPONDENT'S BRIEF

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In the Supreme Court of the United States

GOODYEAR LUXEMBOURG TIRES, SA,
GOODYEAR LASTIKLERI T.A.S., AND
GOODYEAR DUNLOP TIRES OPERATIONS, SA,

Petitioners,

v.

EDGAR BROWN AND PAMELA BROWN,
CO-ADMINISTRATORS OF THE ESTATE OF JULIAN DAVID
BROWN, AND KAREN M. HELMS, ADMINISTRATRIX OF THE
ESTATE OF MATTHEW M. HELMS,

Respondents.

On Writ of *Certiorari* to the
North Carolina Court of Appeals

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QUESTION PRESENTED

Whether foreign-based subsidiaries of an American corporation that choose to become part of an ongoing and highly-integrated business enterprise operating within the forum may evade that state's general personal jurisdiction even though they regularly sell tens of thousands of their products through that enterprise in the forum state?

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STATEMENT OF THE CASE

Petitioners' "Statement of the Case" is correct except in its characterization of the Court of Appeals' decision. *See* Petitioners' Brief at 2. As demonstrated herein, "the court below," did not "[b]ase[] such general jurisdiction solely on the fact that a portion of the tires that Petitioners manufacture has reached [North Carolina] via the stream of commerce." *Id.*

INTRODUCTION

This case tests the limits of outsourcing.[1]

Goodyear Tire & Rubber Company ["Goodyear"], an American tire-maker, and Petitioners, its foreign design and manufacturing subsidiaries, made a strategic business decision to conduct their business in North Carolina as members of a highly-integrated intra-corporate, global enterprise. As members of the Goodyear enterprise, however, Petitioners did not function as free-standing businesses. Instead, they ceded to the enterprise some core business functions, including solicitation of orders and distribution of their own products. As one Goodyear official scoffed, Petitioners "just build widgets." JA256.

After successfully utilizing the Goodyear enterprise to sell tens of thousands of their tires in North Carolina, however, Petitioners claim that they cannot be sued there for the fatal injuries their tire inflicted upon two North Carolina teenagers in France because North Carolina's courts have no general personal jurisdiction over them.

This Court must, therefore, decide whether, by outsourcing product design and manufacturing to subsidiaries in foreign countries, American corporations like Goodyear have also "outsourced" to foreign courts the exclusive right to decide whether their subsidiaries are liable in tort for deaths resulting from the defective products those subsidiaries produce.

[1] "Outsourcing involves contracting for services from third parties that would historically have been done in-house by a business' employees." Ann Spiotto & James Spiotto, *The Ultimate Downside of Outsourcing: Bankruptcy of the Service Provider*, 11 AM BANKR INST L. REV. 47 (Spring 2003)

STATEMENT

I. THE ACCIDENT

Thirteen-year-old Julian Brown and Matt Helms were once considered among the best young soccer players in their home state of North Carolina. JA122-23. Both were invited to play on its Olympic development team at European tournaments. JA124-24.

On April 18, 2004, Julian, Matt, and their teammates rode on a bus to Charles de Gaulle Airport to begin their long journey home. PA31a. Outside Paris, a tire on that bus, "designed, manufactured and distributed" by Goodyear Luxembourg Tires, SA ["Goodyear Luxembourg"], Goodyear Lastikleri T.A.S. ["Goodyear Lastikleri"], and Goodyear Dunlop Tires Operations, SA ["Goodyear Operations"], through Goodyear's "internal distribution" system, blew out when its plies separated. PA31a, 33-35a; JA255. The driver lost control of the speeding bus, it hit a concrete wall, and overturned, crushing and killing Matt Helms, who died at the scene in the rain. PA31a; JA126-27.

Julian Brown was thrown from the bus by the accident then trapped underneath it when the bus rolled atop him. JA126. He suffered 2 broken legs, a broken jaw, severe pelvic fractures, and severe head trauma. *Id.* Julian lay in a coma for 8 days. *Id.* When French doctors pronounced him brain dead, his parents, Respondents Edgar and Pamela Brown, and his sister, who had all travelled from North Carolina, made the agonizing decision to remove life support. *Id.* They were at his side when he died.

II. The Goodyear Tire

The tire that led to Julian's and Matt's deaths was manufactured in Turkey by Goodyear Lastikleri, designed by Goodyear Luxembourg, and sold through Goodyear Operations. PA32a; JA202, 236. Called a Goodyear Regional RHS tire, JA236, the tire bore certification markings required by the U.S. Department of Transportation before tires may be sold in the United States. JA202-03; 290-91.

These tires are not regularly sold in the United States; however, modified versions were imported in 2006 when a strike closed the American plant that ordinarily produced them. JA237-38. Most were eventually returned to Europe unsold. JA238. The Court should not confuse these tires, as Petitioners do, *see* Petitioners' Brief at 3, with the thousands of automobile, bus, truck, and specialty tires imported into and sold by Petitioners in North Carolina through Goodyear's internal distribution system, described below.

III. Petitioners' Role in the Goodyear Enterprise

Petitioners are Goodyear subsidiaries. PA34a. Goodyear owns 100% of Goodyear Operations' stock. *Id.* Goodyear is an American-based multinational corporation that develops, markets, and sells tires for myriad applications. A named defendant below, JA119, Goodyear did not contest the trial court's assertion of general personal jurisdiction over it here and has not joined Petitioners' appeal.

Goodyear and its subsidiaries conduct their global tire business through a highly-integrated, "internal"

supply and distribution system of which each is part. JA255. As explained by Donn Kramer, Director of Product and Supply Chain Management for Commercial Systems, as Goodyear's representative, he "takes a product from concept through production, deciding performance parameters and so on. And then on the supply side it's scheduling the plants for production on the commercial product side the business, and customer service, OEM [original equipment manufacturer] replacement, and deployment of the product from the facilities." JA224-25.

Goodyear's global enterprise has deep and long-standing roots in North Carolina. JA121. Goodyear has been registered to do business there since 1956 and maintains a registered agent in Raleigh.[2] It also owns and operates three large tire and tire-mold manufacturing plants in Fayetteville, Statesville, and Asheboro, North Carolina.[3]

[2] Dep't of the Secretary of State, N.C., *available at* http://www.secretary.state.nc.us/corporations/Corp.aspx?PitemId=5030445 [listing for "Goodyear Tire & Rubber Company"]. Upon request, a court "shall" take judicial notice of facts not subject to reasonable dispute. *See* FED. R. EVID. 201. *Government of Canal Zone v. Burjan*, 596 F.2d 690, 694 (5th Cir. 1979) (Rule 201 applies even on appeal). This Court is requested to take judicial notice of the facts set forth in the listed public records.

[3] *See supra* note 2; FED. R. EVID. 201. This Court is requested to take judicial notice of property tax records for Goodyear from Iredell, Randolph, and Cumberland Counties, North Carolina, *available at* http://www.co.iredell.nc.us/apprcard/apprcard.asp?Parcel=4773059126.000&Card=001 ["mold plant"]; http://txpwa.co.randolph.nc.us/publicweb access/BillDetails.aspx?BillPk=1955884 [real property], http://txpwa.co.randolph.nc.us/publicwebaccess/BillDetails.aspx?BillPk=2001705 [business personal property]; http://152.31.99.19/d21hb/www/SWMW200

By participating in Goodyear's global enterprise, Goodyear subsidiaries, irrespective of their level of ownership by Goodyear, surrender their status as independent and free-standing businesses. Instead, they act as carefully-coordinated operational links in the Goodyear global supply chain – "sources" in Goodyear parlance. JA228, 270. To that end, Goodyear Luxembourg and Goodyear Lastikleri did not directly solicit sales of their own products in North Carolina *or anywhere else*. Instead, as Mr. Kramer explained:

> Q. The originating request comes from Goodyear US to these –
> A. Right, right.
> Q. – either your subsidiary corporations or related companies?
> A. Right.

JA279 ("it would be emanating from a request that we [Goodyear] would make for a requirement for something we do not have . . ."); JA227, 228, 256.

Once a request to supply products was made through the Goodyear enterprise and products were produced, whether the plant was located in Turkey or North Carolina, the distribution process was the same. JA264. "There's three channels, either goes to OE [original equipment], it goes to replacement, or it goes for export." *Id.* Moreover, Mr. Kramer made clear that "they [Petitioners] don't send tires into the United States for distribution. We [Goodyear] make that determination in this country." JA279. Mr. Kramer testified that this practice was not confined to goods sent to the United States:

CGI ["industrial" property]; http://152.31.99.19/d21hb/www/SMMW110.CGI?LRPARC=128029&TXYEAR=2010 [plant equip.], respectively.

A. Well, first of all, the plant in Turkey [Goodyear Lastikleri] doesn't control any distribution.
Q. Okay.
A. They just manufacture the tire.
Q. Got you.
A. They don't interface with any of the other pieces. Their job is to be given a forecast or a ticket and then they just build widgets.

JA256. In other words, "they would not deal directly with customers or bring tires into the United States without our [Goodyear's] approval and sanction." JA256. He emphasized that "Europe would never send tires over here through . . . as one of our enterprises without coming through [Goodyear] North America Tire to say, you know, should tire come in or shouldn't come in . . . *that just doesn't happen*." JA259 (emphasis supplied).

Thus, when Goodyear Lastikleri shipped tires to North Carolina, it shipped them solely through Goodyear's regular, internal distribution network, and at its request. Mr. Kramer explained:

Q. Were those tires shipped solely through Goodyear chain or were those tires sold to independent dealers from Europe, for example?
A. Well, for our involvement *they would never go through another independent dealer. We would handle it through our internal distribution.*
Q. Okay. And do you know if those 1,847 tires[4] sold in North Carolina, were all of those

[4] After subsequent review, Goodyear and Donn Kramer determined that the actual sales numbers were substantially higher JA293-94

> sold through Goodyear tire dealers or Goodyear – through the Goodyear distribution, internal distribution or were they sold through independent?
>
> * * *
>
> A. Well, *Goodyear would have brought them in* –
>
> Q. Okay.
>
> A. – and then they would have been sold through the independent dealers.

JA254-55 (emphasis supplied). The distribution process was the same for Goodyear Luxembourg's and Goodyear Operations' products. JA269-70; 294. In sum, *none* of Petitioners' products ever left the Goodyear enterprise and its "internal distribution" system until *after* they reached North Carolina.[5]

During the relevant period, Petitioners manufactured, at Goodyear's request, more than 44,000 tires they sold in North Carolina through the Goodyear enterprise described above. JA293-94. In particular, from 2004 through 2007, Goodyear Luxembourg manufactured, at Goodyear's request, 6,402 commercial truck, trailer and passenger vehicle tires it sold through that enterprise in North

[5] Petitioners misstate the evidence when they claim that 1) Petitioners did not know their tires were being sold in the U.S. or North Carolina, 2) tires eventually sold in North Carolina were "sold" to an unidentified "affiliate" in Europe; and 3) Goodyear itself "purchased a small percentage of those tires from the European affiliate." Petitioner's Brief at 48-49. There is nothing in the testimony cited or, indeed, in the record here that suggests that these tires were "sold" to anyone until after they reached North Carolina. Until that point, Donn Kramer testified that they remained in Goodyear's "internal distribution" system. JA255

Carolina. JA293-94. Similarly, Goodyear Operations manufactured, at Goodyear's request, 33,923 passenger vehicle tires it sold through the Goodyear enterprise in North Carolina. JA294. Finally, Goodyear Lastikleri manufactured, at Goodyear's request, 4,059 passenger vehicle tires it sold through the Goodyear enterprise in the state. JA294.

Mr. Kramer conceded that specialty tires manufactured at Petitioners' plants were also routinely requested, brought into, and sold by them in North Carolina through the Goodyear enterprise to replace those sold as original equipment on "low-boys," and horse and boat trailers. JA241-43. He admitted that tires manufactured at Goodyear Luxembourg's plant had also been requested, brought into, and sold by Goodyear Luxembourg through the Goodyear enterprise in North Carolina for use on cement mixers, waste haulers, and front-end loaders. JA248-49. Goodyear needed to import these tires into North Carolina because Goodyear did "not have a source here. . ." JA250-51 (Q. "[G]oodyear US plants may not make that particular type of tire? A. Right."). Thus, Goodyear's ordinary and exclusive way of supplying these specialty tires to buyers and dealers who requested them in North Carolina was to "source" them from Petitioners' plants abroad.

Unfortunately, although he was designated as Goodyear's representative for a FED. R. CIV. P. 30(b)(6) deposition on these issues, JA205-07, Mr. Kramer did no research and thus could not quantify the actual numbers of such sales, or of the many tires sold as original equipment on European passenger cars, buses, and trucks imported into North Carolina. JA248. Thus, the trial court found that "the number

of tires shipped into North Carolina from each of these manufacturers may actually be substantially higher . . ." PA33a.

IV. THE DECISIONS BELOW

A. The Trial Court's Order

The trial court, in its order exercising general personal jurisdiction over Petitioners, never used the term "stream of commerce." PA30-36a. Not once.

Instead, it made four key conclusions of law: 1) "[d]efendants have continuous and systematic ties with the State of North Carolina;" 2) "[d]efendants activities in North Carolina are substantial;" 3) the quantity, nature, and quality of their contacts as well as North Carolina's interest in the case, and the convenience of the parties all "weigh in favor of the exercise of general jurisdiction over the defendants;" and 4) the "exercise of general jurisdiction over the defendants comports with due process and does not offend traditional notions of fair play and substantial justice." PA35-36a.

In support of these conclusions, the Court focused on Goodyear's highly-integrated business model. PA33-35a; *see* PA6a & n.4. In particular, it found:

> 12. The defendants, as manufacturers, did not have their own distribution system for the sale of their tires, but instead *used their Goodyear parent and affiliated companies to distribute the tires they manufactured to the United States and North Carolina.*

> 13. The defendants knew or should have known that tires they manufactured were *shipped to the United States through their Goodyear parent and affiliated companies* and sold in North Carolina on a continuous and systematic basis.
>
> * * *
>
> 16. [A]ll three of the foreign defendant companies are subsidiaries of Goodyear in the United States *and as such have additional, abundant ties to the United States.*

PA33-34a (emphasis supplied). The Court found Petitioners' substantial tire sales in North Carolina through the Goodyear's enterprise, the revenue Petitioners derived from them, the "quality of those contacts, which include systematic and repeated contacts with the state of North Carolina for the purpose of commerce, along with the defendants' ownership by a U.S. corporation doing substantial business in North Carolina, weighed in favor of a finding of general jurisdiction over the defendants." PA34a.

B. The Court of Appeals' Opinion

In reviewing the trial court's order, the Court of Appeals engaged in a two-step process. It determined first "whether the [trial court's] findings are supported by competent evidence;" and, if so, "whether . . . the exercise of personal jurisdiction would violate defendant's due process rights." PA10a (quoting *Better Bus. Forms, Inc. v. Davis*, 462 S.E.2d 832, 838 (N.C. 1995)).

The Court focused first on "'[w]hether the trial court's findings of fact support its legal conclusions that Defendants had 'continuous and systematic contacts with North Carolina' thereby justifying the exercise of general personal jurisdiction over Defendants." PA13a. Thus, "[t]he relevant question before both the trial court and this Court is whether Defendants' 'activities in the forum are sufficiently continuous and systematic' . . ." *Id.* It then discussed the factors courts ordinarily consider in determining whether such contacts exist. PA12a.

The Court correctly recognized that, in assessing Petitioners' contacts with North Carolina, it must insure that those contacts resulted from "actions by Defendants rather than from mere happenstance or coincidence or the actions of others." PA13a. Unfortunately, in evaluating the contacts here, the Court took a slight detour.

The Court apparently responded to language, adopted by North Carolina's courts[6] from *Hanson v. Denckla,* 357 U.S. 235, 253 (1958),[7] and *Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408, 417 (1984), utilizing the "purposeful availment" concept for the limited purpose of assessing whether, in the general jurisdiction context, contacts could be attributed to a foreign defendant or were, instead, the "unilateral" acts of someone else. It then

[6] *See Modern Globe, Inc. v Spellman,* 263 S.E.2d 859, 863 (N.C. Ct. App. 1980) (quoting *Hanson,* 357 U.S. at 253), *quoted in Lulla v. Effective Minds, LLC,* 646 S.E.2d 129, 133 (N.C. 2007) (cited by the trial court)

[7] "It is essential that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State." 357 U.S. at 253

engaged in extended *dicta* discussing that standard as used in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980), for assessing whether the exercise of specific jurisdiction over a foreign defendant offends due process. *See* PA14a-21a. It was, however, in the more limited context that the Court asked whether Petitioners had "purposefully injected their products into the stream of commerce without any indication that [they] desired to limit the arc of distribution of [their] product as to exclude North Carolina" PA20a.

That limitation becomes apparent when the trial court states, at the end of the same paragraph:

> Thus, we must evaluate the validity of the trial court's decision that [Petitioners] were subject to the jurisdiction of the Onslow County Superior Court by examining whether the trial court's findings of fact, considered in their entirety, provide an adequate basis for a conclusion that Defendants had 'continuous and systematic contacts with North Carolina' in light of the well-established legal principles outlined above.

PA21a.

The Court's exuberant concern for proper attribution of contacts becomes apparent when it questions trial court findings 17 and 21, PA22a, and concludes that Petitioners were not "directly" responsible for their tires' presence in North Carolina, in large part, because Petitioners were never directly responsible for their tires' presence *anywhere*. PA21a; JA223-28; 256; 279.

In finding that the evidence supported the trial court's findings, the Court explained: "through a regular process employed within the Goodyear organization, a substantial number of tires manufactured by the Defendants were imported into the United States and distributed to various entities in North Carolina." PA26a. The Court, therefore, found that Petitioners "purposefully and intentionally" placed their products in the Goodyear distribution enterprise, which it described as the "stream of commerce," PA27a, knew or should have known that "a Goodyear affiliate obtained the tires manufactured by Defendants and sold them in the United States in the regular course of business," PA27a, and "that several thousand tires manufactured by each of the Defendants eventually found their way into North Carolina markets through *the operation of a continuous and highly-organized distribution process*." *Id.* (emphasis supplied).

The Court of Appeals made clear that its use of "stream of commerce" analysis was limited to whether tire sales in North Carolina could be charged to Petitioners for jurisdictional purposes.

> Instead of adopting a general rule precluding the use of stream of commerce analysis to support a finding of general personal jurisdiction, we believe that the real issue is the extent to which Defendants' product were, in fact, distributed in North Carolina markets. . . . the trial court's findings reflect that thousands of tires manufactured by each of the Defendants were distributed in North Carolina *as the result of a highly organized*

distribution process that involved Defendants and other Goodyear affiliates.

PA28a (emphasis supplied). On *that* basis, the Court found "competent evidence" that the exercise of general jurisdiction over Petitioners in North Carolina was proper and did not offend due process. PA29a.

SUMMARY OF ARGUMENT

This case presents the Court with a clear choice between refining well-established principles of "general jurisdiction"[8] to reflect and address the realities of 21st-Century transnational commerce or calcifying those principles in discarded 19th-Century business models.

Looking to the distant past, Petitioners would require the physical presence in the forum of a legal fiction – the corporation – before a court could exercise general jurisdiction over it. Sixty-five years ago, in *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), this Court rejected as obsolete just such a "presence" requirement and expanded jurisdictional boundaries to reflect the business realities of the time. The "minimum contacts" test it

[8] "When a state exercises personal jurisdiction over a defendant not arising out of or related to the defendant's contacts with the forum, the state has been said to be exercising 'general jurisdiction' over the defendant." *Hall*, 466 U.S at 415, n.9 (1984) (citing Lea Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 SUP. CT. REV. 77, 80-81 (1980); Arthur von Mehren & Donald Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136-44 (1966)).

announced governs the exercise of personal jurisdiction over corporations to this day. It has four requirements: the corporation's contacts with the forum must be 1) continuous; 2) systematic; and 3) substantial such that the exercise of general jurisdiction over it 4) comports with due process.

Since *International Shoe* was decided, American corporations and their foreign subsidiaries have increasingly conducted their U.S. business through highly-integrated networks in which each constituent corporation plays a critical role. "Outsourcing" manufacturing to foreign countries has only increased this trend. When, as here, the products those foreign subsidiaries manufacture injure American citizens, however, these subsidiaries claim that they are beyond the reach of U.S. courts.

This Court has already constructed the jurisprudential foundation needed to exercise general jurisdiction over Petitioners. In fact, even the Government admits that lower courts routinely exercise jurisdiction over corporations under similar circumstances. You would never know it from reading Petitioners' Brief.

Petitioners claim that the Court of Appeals' decision conflicts with dozens of opinions from state and circuit courts. Yet most of these courts have also asserted jurisdiction over or found corporations liable on similar facts and enterprise theories. A purported conflict arises only because Petitioners characterize this case as one in which the Court asserted general jurisdiction over defendants solely because they placed some goods in the ordinary "stream of commerce," *without more*, and some ended up in North Carolina. That is simply not what happened.

Petitioners chose to become participants in a highly-integrated, "internal" Goodyear supply and distribution enterprise. Through that enterprise, Goodyear requested tires on behalf of North Carolina buyers and dealers, Petitioners manufactured tires based on such requests, then utilized the internal distribution network to transport, import, and sell tens of thousands of tires in North Carolina, deriving substantial income from such sales. *They made no sales in North Carolina outside this enterprise.* Petitioners' contacts with North Carolina were, therefore, continuous, systematic, and substantial.

Due process is also satisfied by the exercise of general jurisdiction over Petitioners. In other areas of the law, this Court has found that due process concerns are satisfied for corporations that actively participate in integrated business enterprises. Traditional due process concerns – convenience, interest, and fairness – are also satisfied here.

There are sound policy reasons to affirm the Court of Appeals' decision. Adopting Petitioners' jurisdictional model would devastate the U.S. economy by encouraging American companies to "outsource" manufacturing and jobs to foreign subsidiaries in order to "outsource" these subsidiaries' tort liability to foreign courts. By contrast, there is no reason to believe that trade will collapse because this Court affirms. Finally, courts are equipped to control forum-shopping, if any.

The exercise of general jurisdiction over Petitioners here was proper. Respondents respectfully request that this Court affirm the decision of the Court of Appeals as to all Petitioners and remand the case for trial.

ARGUMENT

I. TO EXERCISE GENERAL JURISDICTION OVER PETITIONERS, THIS COURT REQUIRES CONTINUOUS, SYSTEMATIC, AND SUBSTANTIAL CONTACTS WITH THE FORUM, NOT PHYSICAL "PRESENCE" IN IT

A. *International Shoe* and Its Progeny Rejected 19th Century Notions of "Presence" as a Prerequisite to Exercising General Jurisdiction Over Corporations

Since Roman times, a court's jurisdiction to render judgment *in personam* had been grounded in its *de facto* power over the defendant's person. *Burnham v. Superior Court of Calif.*, 495 U.S. 604, 611 (1990) (quoting JOSEPH STORY, COMMENTARIES ON THE CONFLICT OF LAWS §§554, 543 (1846)). Thus, a defendant's "presence" in the forum was once considered a prerequisite to rendition of judgments binding upon him. *Pennoyer v. Neff*, 95 U.S. 714, 733 (1878); *Philadelphia & Reading R. Co. v. McKibbon*, 243 U.S. 264, 265 (1917). This comes as no surprise.

"Prior to the 1850's, it was either assumed or required that the operations of corporations would be confined to their chartering states." *See* Henry Butler, *Nineteenth Century Jurisdictional Competition in the Granting of Corporate Privileges*, 14 J. LEGAL STUD. 129, 151 (1985), *cited in* Joseph Sommer, *The Subsidiary: Doctrine Without a Cause*, 59 FORDHAM L. REV. 227, 275 & n.182 (1990). In fact, the first corporate subsidiary was not created until 1888, ten years *after Pennoyer* was decided. *See Louis K. Liggett Co. v. Lee*, 288 U.S. 517, 548 (1933) (Brandeis, J. dissenting). It was generally

acknowledged at that time, however, that, for corporations, "presence" was "purely fictional." *Burnham*, 495 U.S. at 618 (citing 1 JOSEPH BEALE, A TREATISE ON THE CONFLICT OF LAWS 360, 384 (1935); *Hutchinson v. Chase & Gilbert, Inc.*, 45 F.2d 139, 141 (2d Cir. 1930)).

"In the late 19th and early 20th centuries, changes in the technology of transportation and communication, and the tremendous growth of interstate business activity led to an 'inevitable relaxation of the strict limits on state jurisdiction' over nonresident individuals and corporations." *Hanson*, 357 U.S. at 260. That "relaxation" culminated in *International Shoe*.

In *International Shoe*, 326 U.S. at 316, the Court recognized the right of state courts to assert jurisdiction over nonresident corporations.

> [D]ue process requires only that in order to subject a defendant to a judgment in personam if he be not present within the territory of the forum, have certain minimum contacts with it such that the maintenance of suit does not offend 'traditional notions of fair play and substantial justice.'

Id. (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). The Court justified its abandonment of the traditional requisite of "presence" in the forum by the difficulty of applying that concept to corporations.

> Since the corporate personality is a fiction, although a fiction intended to be acted upon as though it were a fact . . . it is clear that unlike an individual its 'presence' without, as well as within, the state of its origin can be manifested only by activities carried on in its

> behalf by those who are authorized to act for it. *To say that the corporation is so far 'present' there as to satisfy due process requirements . . . is to beg the question to be decided.*

326 U.S. at 316 (emphasis supplied). Thus, the Court held that due process demands are met "by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there." *Id.* at 317. It added, "an 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection." *Id.*

Against this backdrop, the Court concluded that jurisdiction over foreign corporations in the forum was appropriate "when the activities of the corporation there have not only been *continuous and systematic*, but also give rise to the liabilities sued on . . ." *Id.* (emphasis supplied).

Although *International Shoe* arose out of attempts by the State of Washington to collect deficiencies in payments to its unemployment compensation fund for salesmen employed by the Illinois company in Washington, the Court also announced the jurisdictional yardstick to be used when claims arise *outside* the forum.

> While it has been held . . . that continuous activity of some sorts within the state is not enough to support the demand that the corporation be amendable to suits unrelated to that activity . . . there have been instances in which *the continuous corporate operations*

> *within the state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealing entirely distinct from those activities.*

Id. at 318. The Court eschewed "mechanical or quantitative" due process tests. *Id.* at 319. Instead, "whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." *Id.*

The Court reaffirmed these principles in *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952). A nonresident sued in Ohio a Philippine corporation that had been "carrying on in Ohio a continuous and systematic, but limited, part of its business" during World War II for claims arising from its unrelated activities elsewhere. *Id.* at 438. Although the corporation had never been licensed to do business in Ohio or appointed an agent for service there, the Court did not find those markers "a conclusive test." *Id.* at 445.

The Court found that the due process clause neither prohibits or compels Ohio's exercise of general jurisdiction over nonresident corporations. *Id.* at 446. Instead, the question is "whether, as a matter of due process, the business done in Ohio by the . . . mining company was sufficiently substantial and of such a nature as to permit Ohio to entertain a cause of action against a foreign corporation." *Id.* at 447.

In *Perkins*, the corporation had no office or ongoing mining operations in Ohio. *Id.* Instead, the company's president and principal shareholder had a

personal office in which he conducted his personal affairs, some activities on the company's behalf, and kept the company's files. *Id.* at 447-48. He conducted some company correspondence and drew salary checks in Ohio, using two local banks which held some company funds. *Id.* at 448. An Ohio bank acted as transfer agent for Benguet's stock and he held few board meetings at his home or office in Ohio. *Id.* at 448. Finally, he oversaw the rehabilitation of the company's mining operations in the Philippines from his office in Ohio. *Id.*

On these facts, the Court found that "he carried on in Ohio a continuous and systematic supervision of the necessarily limited wartime activities of the company" such that "it would not violate federal due process for Ohio either to take or decline jurisdiction of the corporation in this proceeding." *Id.*

In *McGee v. Int'l Life Ins.Co.*, 355 U.S. 220, 226 (1957), the Court reaffirmed that "in the continuing process of evolution this Court has accepted and then abandoned 'consent,' 'doing business,' and 'presence' as the standard for measuring the extent of state judicial power over corporations." The Court acknowledged that "a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents," in large part, because of "increasing nationalization of commerce. . ." *Id.* at 222-23.

This Court again reaffirmed *International Shoe's* departure from historic reliance on presence in the forum in *Shaffer v. Heitner*, 433 U.S. 186 (1977). The Court first pronounced that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in International Shoe and its progeny." *Id.* at 212.

> Thus, the inquiry into the State's jurisdiction over a foreign corporation appropriately focused not on whether the corporation was 'present' but on whether there have been 'such contacts of the corporation with the state of the forum as to make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there.'

Id. at 204.

In *Insurance Corp. of Ireland v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 702 (1982), an insurance case, the Court announced that personal jurisdiction "represents a restriction on judicial power *not as a matter of sovereignty*, but as a matter of individual liberty." (Emphasis supplied). Otherwise, it reasoned, personal jurisdiction could not be waived. *Id.* at 703. On that basis, it reaffirmed that the test for personal jurisdiction was "minimum contacts," not "presence." *Id.* at 702-03.

The Court continued the evolution from the concept of "presence" in *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984). A New York resident sued Hustler Magazine, an Ohio corporation with its principal office in California, for libel in New Hampshire. Hustler's only connection with New Hampshire was its regular sales of 10,000 to 15,000 magazines there each month. *Id.* at 772. Nevertheless, the Court found New Hampshire's exercise of jurisdiction over Hustler proper even for claims for damages from the libel in all 50 states under the state's "single publication rule." *Id.* at 773, 781 & n.2.

The same year, the Court decided *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984), as case arising from a helicopter crash in Peru that killed four U.S. citizens. Their survivors sued Helicopteros Nacionales de Colombia ["Helicol"], a Colombian corporation and owner of the helicopter, in Texas. None of the survivors or decedents were Texas residents.

Helicol was not authorized to do business in Texas, had no agents for service of process, never performed helicopter operations in the state, or sold any products that reached Texas. *Id.* at 412. It never solicited business in Texas, signed a contract or had any employees based there, never recruited any employee in the state, owned any real or personal property, or maintained an office or establishment there either. *Id.*

In fact, Helicol's only contacts with the state were 1) the fact that decedents were hired in Houston by a Houston-based consortium [of which Helicol was not part]; 2) Helicol's CEO once met and negotiated part of its deal with decedents' employer in Houston; 3) Helicol made helicopter and spare part purchases in Texas from 1970-77; 4) Helicol occasionally sent pilots to Texas for training and to ferry aircraft to South America; 5) it sent management and maintenance personnel to Texas to receive "plant familiarization" and technical advice; and 6) Helicol received monies drawn on Texas banks. *Id.* at 411.

In holding that the exercise of general jurisdiction over Helicol in Texas offended due process, the Court framed its inquiry as "whether [Helicol's contacts with Texas] constitute the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*." *Id.* at 412.

In analyzing these contacts, the Court first dismissed the notion that the source of Helicol's checks mattered in its jurisdictional inquiry. *Id.* at 416-17 (citing *Hanson*, 357 U.S. at 253; *Kulko v. California Superior Court*, 436 U.S. 84, 93-94 (1978)). In *Hanson*, the Court made clear that

> The unilateral activity of those who claims some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant *purposefully avails* itself of the privilege of conducting activities within the forum State, thus invoking the protection of its laws.

357 U.S. at 253 (emphasis supplied); *see Keeton*, 465 U.S. at 781 (jurisdiction appropriate where defendant "deliberately" engaged in significant activities in the state). The *Hall* Court also rejected Helicol's purchases in Texas, relying on *Rosenberg*'s conclusion that "mere purchases [as opposed to sales], even if occurring at regular intervals, are not enough to warrant" the exercise of general personal jurisdiction.[9]

[9] 466 U.S at 417 (citing *Rosenberg Bros. & Co v. Curtis Brown Co.*, 260 U.S. 516 (1923)). Nothing in the Court's citation to *Rosenberg*, however, evinces its resurrection of *Pennoyer's* "presence" requirement. In fact, in a footnote, the Court noted the limited proposition for which it and the *International Shoe* Court cited that case. 466 U S. at 418, n 12. In dissent, Justice Brennan challenged even this narrow reliance on *Rosenberg's* continuing validity *Id.* at 420 (Brennan, J., dissenting).

In dissent, Justice Brennan challenged the Court's conclusion that the exercise of general jurisdiction over Helicol was improper. *Id.* at 420. He observed first that "the Court makes no attempt, however, to ascertain whether the narrow view of *in personam* jurisdiction adopted by the Court in Rosenberg comports with 'the fundamental transformation of our national economy' that has occurred since 1923." *Id.* at 422 (Brennan, J., dissenting) (quoting *McGee*, 355 U.S. at 222-23). Noting the vast expansion and increasing complexity of the modern business environment, he complained:

> while relying on these modern-day realities to denigrate the significance of Helicol's contacts with the forum, the Court refuses to acknowledge that these same realities require a concomitant expansion in a forum's jurisdictional reach.

Id. at 424, n.2.

No Court since *Hall* has addressed directly the limits of general jurisdiction. Nevertheless, several have reaffirmed the rule that jurisdiction "may not be avoided merely because the defendant did not physically enter the forum State." *Burger King v. Rudzewicz*, 471 U.S. 462, 476 (1985).

> [I]t is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus . . . *we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.*

Id. (emphasis supplied).

Similarly, in *World-Wide Volkswagen*, 444 U.S. at 294, the Court acknowledged that, in response to the "increased the flow of commerce between the States . . . the requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of [*Pennoyer*], to the flexible standard of [*International Shoe*]." *Id.* In fact , it announced that the Court had "abandon[ed] the shibboleth that '[the] authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established." *Id.* at 293, (quoting *Pennoyer*, 95 U.S. at 720). Nevertheless, it held that the "total absence" of contacts with the forum precluded specific jurisdiction in that case. *Id.*

Both Justices Brennan and Marshall dissented. Both objected that the Court's decision did not reflect the realities of modern commerce. Justice Marshall focused on the realities of the marketplace and, in particular, on the "purposeful actions of the defendants themselves in choosing to become part of a nationwide, indeed a global, network for marketing and servicing automobiles." *Id.* at 314-15 (Marshall, J., dissenting).

Ironically, it may be *Burnham*, 495 U.S. 604, a case involving "tag" jurisdiction over a nonresident individual, that drove the final stake in *Pennoyer*'s heart. "It may be that whatever special rule exists permitting 'continuous and systematic' contacts . . . to support jurisdiction with respect to matters unrelated to activity in the forum applies only to corporations, *which have never fitted comfortably in a jurisdictional regime based primarily upon 'de facto power over the defendant's person.'*" *Id.* at 610, n.1 (quoting *International Shoe*, 326 U.S. at 316)

(emphasis supplied); *see also Shaffer*, 433 U.S. at 203.

Thus, the jurisdictional test this Court must apply here is whether Petitioners had continuous, systematic, and substantial contacts with North Carolina sufficient to "make it reasonable, in the context of our federal system of government, to require the corporation[s] to defend the particular suit there," *not* whether these legal fictions are "present" in an increasingly "virtual" forum. *Shaffer*, 433 U.S. at 204.

B. Continuous, Systematic, and Substantial Contacts Exist Where, As Here, Foreign Subsidiaries Choose to Become Part of an Ongoing, Internal, Integrated Enterprise Operating Within the Forum

1. This Court's Decisions Countenance the Exercise of General Jurisdiction Over Petitioners

"'If *International Shoe* stands for anything . . . it is that a truly interstate [or international] business may not shield itself from suit by a careful but formalistic structuring of its business dealings.'" *Benitez-Allende v. Alcan Aluminio Do Brasil, S.A.*, 857 F.2d 26, 30 (1st Cir. 1988), *cert. denied*, 489 U.S. 1018 (1989) (Breyer, J.) (quoting *Vencedor Manufacturing Co. v. Gougler Indus.*, 557 F.2d 886, 891 (1st Cir. 1977)). Although justices of this Court have recognized that the proliferation of complex multinational business enterprises may require the concomitant expansion of jurisdictional rules to

address them, the Court has had few opportunities to undertake that expansion. Nevertheless, in the few it has had, this Court has built the jurisprudential foundation it needs to determine the limits of due process in 21st-Century transnational commerce and in this case.

Starting with *International Shoe*, the Court embraced the idea of attribution or merger for jurisdictional purposes of local corporate activities and those of foreign corporations or subsidiaries. *See* Lea Brilmayer & Kathleen Paisley, *Personal Jurisdiction and Substantive Legal Relations: Corporations, Conspiracies, and Agency*, 74 CALIF. L. REV. 1, 2 (1986). In *International Shoe*, the Court permitted salesmen's activities in Washington to supply the necessary contacts with International Shoe in Illinois to support the exercise of jurisdiction over it in Washington even though International Shoe otherwise conducted no business and had no other contact with that state. 326 U.S. at 320.

In *Perkins*, as in this case, the Philippine mining company engaged in no manufacturing or actual production in the forum state. In fact, in *Perkins*, unlike this case, the company had no sales in the forum. The Court upheld the assertion of general jurisdiction over Benguet because its president had engaged in "continuous and systematic *supervision*" of the company's activities from the forum. 342 U.S. at 448 (emphasis supplied). Four years before, in *United States v. Scophony Corp. of Am.*, 333 U.S. 795, 813-16 (1948), the Court had held similarly that a foreign parent could be "found" in the United States because of its "constant supervisions and intervention" in the activities of its U.S. subsidiaries

going well "beyond normal exercise of shareholder's rights."

Although business practices have grown more complex since *Perkins* was decided in 1952, its principle – that supervision of distant business activities from the forum may be sufficient alone to warrant the exercise of general jurisdiction over foreign corporations – remains intact.

Justices Brennan and Marshall, in their dissenting and/or concurring opinions in *Hall*, *World-Wide Volkswagen*, and *Asahi Metal Indus. Co., Ltd. v. Superior Court of Calif.*, 480 U.S. 102 (1987), anticipated that the Court would examine the business context in which a defendant's contacts with the forum arise. *See, e.g., World-Wide Volkswagen*, 444 U.S. at 314-15 (Marshall, J., dissenting).

In *Burger King*, the majority did just that: "We have previously noted that when commercial activities are 'carried on in behalf of' an out-of-state of state party those activities may sometimes be ascribed to the party . . . at least where he is a 'primary [participant]' in the enterprise and has acted purposefully in directing those activities. . ." 471 U.S. at 480, n.22. Because the case could be decided on other issues, however, the Court declined to "resolve the permissible bounds of attribution." *Id.*

These cases demonstrate this Court's increasing willingness to consider and recognize that understanding the nature and complexity of the businesses in which purported contacts arise is critical to its jurisdictional inquiry, particular where multinational corporations are concerned, and that, in highly-integrated business enterprises, the actions of one corporate actor often cannot – and should not – be distinguished from those of another.

2. Other Courts Regularly Exercise General Jurisdiction Over Corporations Under Similar Circumstances

In seeking *certiorari* here, Petitioners claimed that the Court of Appeals' decision conflicts with decisions from the Third, Fifth, and Seventh Circuits, and the states of Texas, Alabama, and Kansas. *See* Petition for Writ of *Certiorari* at 10. It does not.

To the contrary, these courts have addressed questions of whether participation in highly-integrated business enterprises operating within the forum subjects members to general jurisdiction there and found that it does. In general, these courts have looked to the level of economic integration between parent and subsidiary, instead of the legal boundaries between them, in evaluating the defendants' contacts with the forum.[10] Some commentators have called this principle "jurisdictional merger." Brilmayer & Paisley, *supra*, at 14. "[M]erger occurs when the parent and subsidiary are part of a common enterprise that relies on the efforts of both entities to carry out a common plan."[11]

[10] *See generally* PHILLIP BLUMBERG & KURT STRASSER, THE LAW OF CORPORATE GROUPS §§24.09, 29.03-04 (2d ed. 2010), *see also* Kurt Strasser & Philip Blumberg, *Legal Form and Economic Substance of Enterprise Groups: Implications for Legal Policy*, ACCOUNTING, ECONOMICS AND LAW: A CONVIVIUM 1(1) (2010), *available at* http://www.bepress.com/ael/vol1/iss1/4 (summary of enterprise theory).

[11] *Id.* at 30 (citing Blumberg & Strasser). Although typical merger cases arise from efforts to hold corporate parents responsible for their subsidiaries' activities, because the

Among the factors these courts have considered as significant to whether a common enterprise exists are whether the subsidiary is an independent decision-making body;[12] whether its administrative organization is complete;[13] whether the parent and subsidiary project and integrated posture to the public;[14] and whether they exchange information, personnel and group resources.[15] One court described these as "plus" factors, "something beyond the subsidiary's mere presence in the bosom of the corporate family." *Donatelli v. Nat'l Hockey League*, 893 F.2d 459, 465-66 (1st Cir. 1990).

Berry v. Lee, 428 F. Supp.2d 546, 549 (N.D. Tex. 2006), is typical and provides a close analogue here. A Texas resident sued Chinese and Korean subsidiaries in Texas, complaining of sexual harassment and attempted rape that took place on a foreign business trip. She successfully contended that the exercise of general jurisdiction over these corporations was appropriate because, together with

doctrine merges rather than attributes their conduct, it should also apply equally to subject subsidiaries with local parents to jurisdiction in the forum.

[12] *Finance Co. of Am. v. BankAmerica Corp.*, 493 F. Supp. 895, 907 (D Md. 1980); *Bland v. Kentucky Fried Chicken*, 338 F. Supp 871, 877 (S D. Tex 1971).

[13] *Finance Co. of Am.*, 493 F Supp. at 907; *DCA Food Indus. v. Hawthorn Mellody*, 470 F Supp. 574, 583, 585 (S D N.Y. 1979)

[14] *DCA Food Indus*, 470 F. Supp. at 585; *Handlos v. Litton Indus.*, 304 F. Supp. 347, 350-51 (E.D. Wis. 1969).

[15] *See* Brilmayer & Paisley, *supra*, at 30 (citing *Tokyo Boeki [U.S.A.], Inc. v. S.S. Navarino*, 324 F Supp. 361, 364-65 (S.D.N.Y. 1971), Phillip Blumberg, *The Corporate Entity in an Era of Multinational Corporations*, 15 DEL. J. CORP. L 283, 344 (1990) (listing factors).

their Texas-based affiliates and president, they formed a "single business enterprise"[16] with sufficient contacts with Texas to warrant the exercise of general jurisdiction over them.

The Court noted first that "Berry's burden of demonstrating a *prima facie* case of personal *jurisdiction* through alter ego and single business enterprise theories is 'less stringent' than the standard she must meet at trial to prove *liability*."[17] It then listed a number of "factors weighing in favor of fusing the corporations . . ." for jurisdictional purposes. *Id.* at 554. "No single factor is determinative, and the ultimate question is one of control." *Id.* Judged by these standards, the Court found that the local parent's ownership, control, and portrayal to the public that all of the companies were part of a common enterprise warranted the exercise of general jurisdiction over foreign subsidiaries.

The Fifth Circuit has upheld Texas' "single business enterprise" doctrine in both the jurisdictional and liability contexts. *See Fielding v. Hubert Burda Media, Inc.*, 415 F.3d 419, 428 (5th

[16] Texas recognizes the doctrine for both jurisdictional and liability purposes. *See El Puerto De Liverpool v. Servi Mundo Llantero S.A. De C.V.*, 82 S.W 3d 622, 634 (Tex. App. – Corpus Christi 2002, pet. filed). "Under that doctrine, when corporations are not operated as separate entities, but integrate their resources to achieve a common business purpose, each constituent corporation may be held liable for the debts incurred in pursuit of that business purpose." *Gardemal v. Westin Hotel Co.*, 186 F 3d 588, 595 (5th Cir. 1999)

[17] *Id.* at 556 (quoting *Hargrave v. Fibreboard Corp.*, 710 F.2d 1154, 1161 (5th Cir. 1983)) (emphasis supplied). The Texas Supreme Court recently added a fraud element to impose *liability*. *See SSP Partners v. Gladstrong Invs. Corp.*, 275 S W.3d 444, 455 (Tex. 2008).

Cir. 2005); *Hollowell v. Orleans Reg'l Hosp.* LLC, 217 F.3d 379, 388 (5th Cir. 2000).

Courts in the Third and Seventh Circuits have also approved similar doctrines. In the Third Circuit, numerous courts have held that "general jurisdiction does exist when the parent corporation exercises such a degree of control that . . . the corporations function as one integrated enterprise."[18] In the Seventh Circuit, courts may disregard the corporate form for jurisdictional purposes under "unity of purpose" and "alter ego" doctrines.[19]

[18] *Heinrich v. Serv. Corp. Int'l*, 2009 U.S. Dist. LEXIS 62832 *7 (W.D. Pa. July 22, 2009) (citing *Lucas v. Gulf & Western Indus., Inc.*, 666 F.2d 800, 806 (3d Cir. 1981)); *Gaul v. Zep Mfg Co.*, 2004 U.S Dist. LEXIS 9689 *15 (E D. Pa. May 26, 2004); *Ames v. Whitman's Chocolates*, 1991 U.S. Dist. LEXIS 18389 *8 (E.D. Pa. Dec. 30, 1991).

[19] *See, e.g., Judson Atkinson Candies, Inc. v. Latini-Hohberger Dhimantec*, 529 F.3d 371, 379 (7th Cir 2008) ("unity of purpose"); *Van Dorn Co. v. Future Chemical & Oil Corp.*, 753 F.2d 565, 571 & n.1 (7th Cir 1985) (alter ego). *Bulova Watch Co. v. K. Hattori & Co.*, 508 F. Supp. 1322, 1336 (E.D N Y. 1981) (exercise of both general and specific jurisdiction permissible over Japanese corporation based on "common sense" appraisal of the business relationship); *Roorda v. Volkswagenwerk, A.G.*, 481 F. Supp 868, 870-71 (D.S.C. 1979)

In *Torres v. Goodyear Tire & Rubber Co* , 901 F.2d 750 (9th Cir. 1990), a liability case involving virtually identical facts and Goodyear, the Court observed that

> we do not believe it is good law to allow multinational firms the freedom to compartmentalize strict liability by choosing organizational forms that will require actions for defective design of a product such as this to be brought in Luxembourg, those for defective manufacture in Great Britain, those for defective labeling in a third, and the like . . .

Other courts would allow the exercise of general jurisdiction over foreign corporations on similar grounds. For example, a recent North Carolina court, in *Manley v. Air Can.*, 2010 U.S. Dist. LEXIS 125218 *12-14 (E.D.N.C. Nov. 29, 2010), reaffirmed that "general personal jurisdiction" could be asserted over corporate defendants where plaintiffs "make a showing approaching that necessary under traditional 'alter ego' analysis."[20]

Against this backdrop, it becomes apparent that the source of the purported conflict here lies not in the Court of Appeals' decision to uphold the exercise of general jurisdiction over Petitioners under these circumstances, but in its imprecise use of the phrase, "stream of commerce" and Petitioners' baroque portrayal of that use here.

Over time, the phrase has become a jurisdictional Rorschach test. To the Court of Appeals, it clearly meant Goodyear's highly-integrated internal supply

Id. at 754 (Noonan, J., concurring) (quoting *Torres v. Goodyear Tire & Rubber Co*, 1990 Ariz. LEXIS 1 *15-16 (Ariz. Jan 4, 1990)) (emphasis supplied).

[20] *Id.* at *12 (citing *Wyatt v Walt Disney World Co.*, 565 S.E.2d 705, 711 (2002); *Ash v. Burnham Corp.*, 343 S E.2d 2, 4, *aff'd*, 349 S.E.2d 579 (N.C. 1986) (per curiam)); *see, e.g*, *Warren v Honda Motor Co.*, 669 F. Supp. 365, 370 (D Utah 1987); *Hoffman v. Telecommunications, Inc.*, 575 F. Supp 1463, 1471 (D. Kan 1983) (nature of intercorporate relationship is highly probative of the quality and nature of the nonresidents contact with forum through affiliated corporation), *see also Taurus IP v. DaimlerChrysler Corp*, 519 F. Supp 2d 905, 918-19 (W D. Wis. 2007) (Although "[t]he alter ego doctrine and related doctrines are typically employed to . . . reach a controlling entity" for liability purposes, these doctrines are also "relevant to . . . personal jurisdiction") (citing *IDS Life Ins. Co. v. SunAmerica Life. Ins. Co.*, 136 F.3d 537, 540 (7th Cir. 1998)).

and distribution enterprise. To Justice Brennan, it was "the regular and anticipated flow of products from manufacture to distribution to retail sale." *Asahi,* 480 U.S. at 107 (Brennan, J., concurring). In Petitioners' eyes, however, the phrase apparently evokes "unpredictable currents or eddies" that result in the serendipitous arrival of defendants' goods in the forum. *Id.*

Because of this convenient ambiguity, Petitioners could characterize the decision as contrary to holdings that "injecting a product, even in substantial volume, into a forum's 'stream of commerce,' *without more,* does not support general jurisdiction." Petitioners' Brief at 37 (emphasis supplied). Only by portraying the decision in such superficial terms could Petitioners argue the existence of a conflict where none actually exists.

Apparently, the Government was fooled. Otherwise, it would not have admitted that "[a] different analysis may be warranted by the case-specific interactions between particular affiliated corporations, as when a subsidiary acts as the agent or alter ego of the parent corporation, or vice-versa." Government's Brief at 26, n.9 & cases cited therein; *see* GARY BORN & DAVID WESTIN, INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS: COMMENTARY AND MATERIALS 144 (2d ed. 1922).

When the Court's decision is viewed in its proper light, *none* of the allegedly conflicting circuit or state court cases on which Petitioners rely present any impediment to the exercise of jurisdiction here. In fact, read carefully, many actually support Respondents' arguments.

For example, in *D'Jamoos v. Pilatus Aircraft Ltd.*, 566 F.3d 94, 109 (3d Cir. 2009), the court found the

exercise of general jurisdiction improper in *Pennsylvania* but appropriate in *Colorado* based on the relationship between parent and subsidiary. The Court explained: "[The subsidiary] exists to conduct [the parent's] business in North and South America. Moreover, as the exclusive . . . subsidiary in the Americas . . . [it] fairly could be described as the 'source of life' to [the parent's] operations."

Similarly, in *Jackson v. Tanfoglio Giuseppe S.R.L.*, 615 F.3d 579, 588 (5th Cir. 2010), the court recognized that one corporations' contacts with the forum may be imputed to another corporation under an "alter ego" theory, but did not find facts to support such imputation there.

Likewise, in *Merriman v. Crompton Corp.*, 146 P.3d 162, 185 (Kan. 2006), an allegedly conflicting price-fixing case, the Court recognized and applied a "conspiracy theory" of jurisdiction in which all acts in furtherance a common scheme were attributable to all members.[21] On that basis, it found that foreign defendants had continuous and systematic contacts with the forum, but declined the exercise of jurisdiction over them on due process grounds.

Spir Star AG v. Kimich, 310 S.W.3d 868, 875 (Tex. 2010), and *Brown v. Abus Kransysteme, GmbH*, 11 So.3d 788, 795 (Ala. 2008), are typical of the cases Petitioners cite. They are not general jurisdiction cases. None involves highly-integrated multinational

[21] *Id.* at 181-82; *see generally* Ann Althouse, *The Use of Conspiracy Theory to Establish In Personam Jurisdiction: A Due Process Analysis*, 52 FORDHAM L REV. 234 (1983). Although the Court used the theory to establish specific jurisdiction, it did not foreclose its use in general jurisdiction cases.

corporations or enterprise allegations. *See, e.g., Bearry v. Beech Aircraft Corp.*, 818 F.2d 370 (5th Cir. 1987). Thus, none precludes the exercise of general jurisdiction here. The Court, in *Kimich*, explained:

> A nonresident manufacturer does not avoid Texas law merely by forming a Texas affiliate or utilizing a Texas distributor to sell its products in Texas markets. Just as manufacturers cannot escape liability for defective products by selling them through a subsidiary or distributor, neither can they avoid jurisdiction related to such claims by the same means.

Id. at 875.

3. The *Cannon* Doctrine, if It Survives, Does Not Preclude the Exercise of General Jurisdiction Over Petitioners

In *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 336-337 (1925) and *Consolidated Textile Corp. v. Gregory*, 289 U.S. 85, 88, (1933), this Court held that a subsidiary's business in the forum did not automatically constitute its parent's "doing business" there so as to warrant an inference that the parent was "present" there. *Cannon* thus involved no question of constitutional power. When *International Shoe* rejected corporate "presence," however, both cases were effectively overruled. Nevertheless, Petitioners rely on both cases for the broader notion that a parent is not automatically subject to jurisdiction because its subsidiary operates in the forum.

Even if *Cannon* and *Gregory* were still good law, Respondents do not make a bare claim that Petitioners' acts are attributable to Goodyear solely as their parent. Instead, the trial court recognized their coordinated participation in a highly-integrated enterprise and effectively merged the acts of parent and subsidiaries for jurisdictional purposes. As demonstrated below, this Court has recognized the difference. Thus, neither case forecloses the exercise of general jurisdiction over Petitioners here.[22]

This is also true of *Rush v. Savchuk*, 444 U.S. 320 (1980), and *Keeton*, 465 U.S. 770. In *Rush*, a *quasi in rem* action based on an insurance policy, the Court explained that "naturally, the parties' relationship with each other may be significant in evaluating their ties to the forum." 444 U.S. at 332 (emphasis supplied). Against that backdrop, Rush's instruction that *International Shoe's* requirements be met as to each defendant does not foreclose the possibility that activities in the forum engaged in by a closely-related party might be legally attributed to another party under an enterprise, alter ego, or "piercing" theory.

In *Keeton*, the Court's jurisdictional finding was grounded in the parent's own magazine sales in the state of New Hampshire. It, therefore, does not prevent the exercise of general jurisdiction here.

[22] *Amici's* attempt to revive the *Cannon* doctrine by relying on *United States v. Bestfoods*, 524 U.S. 51 (1998), is unavailing. In *Bestfoods*, the Court found only that, to hold a corporate parent liable for cleanup costs under CERCLA, the Government had to meet the statute's test of whether the parent was the polluting facility's "operator," not the participation-and-control test generally applied to assess a parent's supervision over subsidiaries.

C. Petitioners Have Continuous, Systematic, and Substantial Contacts with North Carolina

To determine whether the exercise of general jurisdiction over potential defendants is proper, North Carolina courts engage in a two-step inquiry. First, they assess whether a defendant is subject to the state's long-arm statute, N.C. GEN. STAT. §1-75.4. If it is, then the court must determine whether the exercise of personal jurisdiction over that defendant is consistent with due process requirements, that is, whether it has sufficient "minimum contacts" with North Carolina "such that 'traditional notions of fair play and substantial justice' are not offended by maintenance of the suit" there. *See Cameron-Brown Co. v. Daves*, 350 S.E.2d 111, 113-14 (N.C. App. 1986) (quoting *International Shoe*, 326 U.S. at 316).

"When evaluating the existence of personal jurisdiction pursuant to G.S. §1-75.4(1)(d)," "the question of statutory authorization 'collapses into the question of whether [a defendant] has the minimum contacts with North Carolina necessary to meet the requirements of due process.'" *Bruggeman v. Meditrust Acquisition Co.*, 532 S.E.2d 215, 218, *disc. rev. denied & appeal dism'd*, 546 S.E.2d 90 (N.C. App. 2000) (quoting *Hanes Cos. v. Ronson*, 712 F.Supp. 1223, 1226 (M.D.N.C. 1988)). Courts will ordinarily examine the "1) quantity of the contacts between the defendant and the forum state, 2) quality and nature of the contacts, 3) the source and connection of the cause of action to the contacts, 4) the interest in the forum state, and 5) convenience of the parties." *Cameron*, 350 S.E.2d at 114.

Subsection 1-75.4(1)(d) permits the exercise of "general personal jurisdiction," *Lang v. Lang*, 579 S.E.2d 919, 921 (N.C. 2003), "[w]hen the defendant's contacts with the state are not related to the cause of action but the defendant's activities in the forum are sufficiently continuous and systematic to permit the General Court of Justice to exert personal jurisdiction over that defendant." *Skinner v. Preferred Credit*, 638 S.E.2d 203, 210 (N.C. 2006). The statute does not require that these contacts be "substantial."

Instead, under N.C. GEN. STAT. §1-75.4(1)(d), "[a] court of this State . . . has jurisdiction over a person" "in any action, whether the claim arises within or without this State, in which a claim is asserted against a party" who "[i]s engaged in *substantial activity* within this State, whether such activity is wholly interstate, intrastate, *or otherwise*." (emphasis supplied). The North Carolina courts interpret §1-75.4(1)(d) "[t]o make available to the North Carolina courts the full jurisdictional powers permissible under federal due process." *Dillon v. Numismatic Funding Corp.*, 231 S.E.2d 629, 630 (N.C. 1977).

All three Petitioners unquestionably fall within Subsection 1-75.4(1)(d)'s purview. Thus, the only remaining question here is whether Petitioners have minimum contacts with North Carolina sufficient to meet due process standards.

As set forth in detail above, Petitioners, as subsidiaries of Goodyear, PA34a, enjoyed tens of thousands of tire sales in North Carolina during the relevant period. PA32a; JA293-93. Moreover, these sales numbers are *substantially understated*. PA32-33a; JA248. Petitioners were the sole source for

specialty tires for horse and boat trailers, cement mixers and the like as these items were not produced domestically. JA241-43; 248-49; 250-51. Equally important, untold numbers of Petitioners' tires were sold in North Carolina as original equipment on European passenger cars, buses, and trucks. Both numbers are "untold" only because Petitioners and Goodyear failed to supply that information upon proper and timely request. JA248. All such sales generated substantial revenues for "Goodyear, [Petitioners], and its related companies." PA33a.

Petitioners had only one way to make these sales: through the fixed, "internal" supply and distribution enterprise, coordinated by Goodyear, of which all Petitioners played an integral part. JA255. Within that enterprise, an "originating request" for tires for North Carolina would be initiated by Goodyear and transmitted to Petitioners. JA227-28;256; 270, 279. Once that request arrived and the tires were produced, they were sent to North Carolina through Goodyear's internal distribution system. JA254-55. There was no possibility that Petitioners' products could arrive in North Carolina by any other means or without Goodyear's "approval and sanction." JA259.

It is, therefore, highly misleading for Petitioners to state that they neither solicited nor advertised for business in North Carolina because, as operational links in Goodyear's internal supply chain, they did not solicit business or advertise *anywhere*. JA165-66. Similarly, their statements that they neither shipped nor "actively sold" products in North Carolina also ring hollow since, as members of Goodyear's enterprise, they were not permitted to do so at all. *Id.*

For these reasons, although Petitioners, "as manufacturers did not have their own distribution system" for the referenced tire sales, the trial court could state honestly that they "used their Goodyear parent and affiliated companies to distribute the tires they manufactured to . . . North Carolina." PA33a. Thus, they knew their tires would be "shipped to the United States through their Goodyear parent and affiliated companies and sold in North Carolina on a continuous and systematic basis" because any other distribution process "just doesn't happen." *Id.*; JA259.

Moreover, Petitioners regularly prepared even tires that were not ordinarily sold in the U.S. [Goodyear Regional RHS] for possible sale there, marking them as required by U.S. government regulations. JA202-03.

Petitioners' participation as key actors in the Goodyear internal, ongoing supply and distribution enterprise in North Carolina resulted in tens of thousands of tire sales there. It, therefore provides sufficient continuous, substantial, and rigidly-systematic contacts with North Carolina to satisfy the requirements of due process.

II. Due Process Concerns Are Satisfied When Corporate Defendants Choose to Become Part of and Make Substantial Sales Through Ongoing, Internal, Integrated Enterprises Operating Within the Forum

Even if foreign corporations possess the requisite minimum contacts with the forum, the exercise of general jurisdiction over them violates due process unless it comports with "traditional notions of fair play and substantial justice." *International Shoe*, 326 U.S. at 316. In determining the fairness and reasonableness of a forum's exercise of general jurisdiction, a court will normally consider 1) the defendant's burden in litigating in the forum; 2) the forum state's interest in the litigation; 3) the plaintiff's interest in convenient and effective relief; 4) the judicial system's interest in efficient resolution of controversies; and 5) the shared interest of the several states in furthering fundamental substantive social policies." *Asahi*, 480 U.S. at 113; *World-Wide Volkswagen*, 444 U.S. at 292.

A. Due Process Considerations Are Satisfied in Treating Certain Highly-Integrated American Multinational Corporations and Their Subsidiaries as a Single Enterprise

This Court has repeatedly held that it does not offend due process to impose liability on or exercise jurisdiction over corporations that are part of functionally-integrated business enterprises. The Court has long employed the "unitary business" doctrine to find that it does not offend due process to tax local affiliates of American multinational

corporations. *See Mobil Oil Corp. v. Comm'r of Taxes of Vermont*, 445 U.S. 425 (1980); *Exxon Corp. v. Dep't of Rev. of Wisconsin*, 447 U.S. 207 (1980); Phillip Blumberg, *The Corporate Entity*, *supra* note 15, at 348-55.

Similarly, the National Labor Relations Board has developed and this Court has upheld use of an "integrated enterprise" or "single employer" doctrine in labor and employment discrimination cases. *See Radio & Television Broadcast Technicians Local Union v. Broadcast Serv. of Mobile*, 380 U.S. 255 (1965) (per curiam); Blumberg, *The Corporate Identity*, *supra* note 15, at 355-58.

The "integrated enterprise" standard has also been applied and upheld in cases arising under the Fair Labor Standards Act. The Act defines an "enterprise" as "the related activities performed (either through unified operations or common control) by any person or persons for the common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units." *Id.* Under it, separate incorporation and entity law are irrelevant. *See* Blumberg, *The Corporate Entity*, *supra* note 15, at 358.

B. Petitioners' Contacts With North Carolina Meet Due Process Standards

The Defendants' burden. "The protection against inconvenient litigation is typically described in terms of 'reasonableness' or 'fairness.'" *World Wide Volkswagen*, 444 U.S. at 292. Thus, "the relationship between the defendant and the forum must be such that it is 'reasonable . . . to require the corporation to

defend the particular suit which is brought there.'" *Id.* (quoting *International Shoe*, 326 U.S. at 317).

Yet the limits imposed on state jurisdiction by the Due Process Clause, "in its role as a guarantor against inconvenient litigation, have been substantially relaxed over the years." *World-Wide Volkwagen*, 444 U.S. at 292. In *McGee*, 355 U.S. at 222-23, the Court observed that "this trend is largely attributable to a fundamental transformation in the American economy . . . modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity." That was 1957.

The Court acknowledged 20 years later, in *World-Wide Volkswagen*, that these "historical developments" "have only accelerated in the generation since [*McGee*] was decided." 444 U.S. at 293. Thus, the *Asahi* Court recognized that "when minimum contacts have been established, *often* the interests of the plaintiff and the forum will justify even the serious burdens placed on the alien defendant." 480 U.S. at 114 (emphasis supplied).

As members of an ongoing Goodyear enterprise that has deep ties to North Carolina, Petitioners would suffer little burden in litigating in North Carolina. Petitioners admit that a defendant with such deep ties is *presumed* able to defend itself in the forum without great expense or hardship. Petitioners' Brief at 41 (citing Lea Brilmayer, *et al.*, *A General Look at General Jurisdiction*, 66 TEX. L. REV. 721, 741 (1988)). Because Goodyear itself is already subject to the trial court's general jurisdiction, that presumption unquestionably applies to it. Because Petitioners are part of the Goodyear enterprise in North Carolina and they do

continuous and substantial business in the state as a result; because that enterprise is the exclusive vehicle for their tire sales in the state; and because they use the same lawyers as Goodyear does, PA35a, it is also reasonable to apply that presumption to Petitioners. *Id.* Failing that, these facts and those found by the trial court demonstrate that Petitioners would not be inconvenienced by litigating this case in North Carolina.

Finally, there are three Petitioners from three different countries here. If Respondents' claims are jointly litigated, two of them will always be "inconvenienced" by litigating in a foreign country. It is not, therefore, unreasonable for Respondents' claims to be tried in North Carolina, where Goodyear will litigate.

The Forum State's interest. A state has significant interest "in protecting its citizens by providing a local forum in cases which involve effects 'of a sort highly dangerous to persons and things,' RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 24, Comment A (1971). These would normally be product liability or other tort cases."[23] North Carolina has repeatedly expressed its "'manifest interest' in providing its citizens with a convenient forum for redressing injuries inflicted by out-of-state actors." *Tom Togs, Inc. v. Ben Elias Indus. Corp.*, 348 S.E.2d 782, 787 (1986). In fact, the state's interest in protecting its citizens is so strong that it may even prohibit some dangerous products from

[23] *Lakeside Bridge & Steel Co. v. Mountain State Constr. Co.*, 597 F.2d 596, 602 (7th Cir. 1979); *Kimich*, 311 S.W.3d at 8 ("Texas has a substantial interest in protecting its citizens against harm from dangerous products entering this state").

entering the state at all. *See generally Rasmussen v. Idaho*, 181 U.S. 198 (1901); *Missouri, K. & T.R. Co. v. Haber*, 169 U.S. 613, (1898). This is particularly true where a product results in the death or serious injury to its citizens because the state may have to care for injured citizens or decedents' families at taxpayer expense.

Reflecting this strong interest, RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 50 permits states to exercise jurisdiction over any foreign corporation "which causes effects in the state by an act done elsewhere with respect to any cause of action arising from these effects unless the nature of these effects and of the corporation's relationship to the state makes the exercise of such jurisdiction unreasonable."

Petitioners clearly caused "effects" in North Carolina. They allegedly killed two North Carolina children through the negligent design and manufacture of their tires. If that were not sufficient interest alone to satisfy due process concerns, Goodyear operates three tire plants in North Carolina. Thus, the state has a high interest in insuring that incentives safely to manufacture tires are maintained by holding those responsible for negligent tire manufacture and design accountable in North Carolina.

The Plaintiffs' interest. By filing suit against a multibillion-dollar industry giant like Goodyear and its subsidiaries, Respondents are already at a serious disadvantage. Forcing them to litigate against this well-financed behemoth's subsidiaries in a foreign country, in a foreign language, under laws designed for different cultures and social welfare structures, makes their suit a practical impossibility and

renders Goodyear's subsidiaries effectively judgment-proof. It may even raise its own due process problems in denying injured plaintiffs effective access to the courts.

Asahi's "unique burden" on one who not only "must traverse the distance between" its home base and the forum, but also submit to "a foreign nations' judicial system" may indeed be "severe," but it is exponentially more so for individual plaintiffs. *See* 48 U.S. at 114; Petitioners' Brief at 52. As one court explained: "Forcing plaintiffs to sue the designer in Japan is much more burdensome than forcing a corporation, which is inextricably linked with a manufacturer that places its product worldwide, to litigate in [the U.S.] . . . it is not against traditional notions of 'fair play and substantial justice' . . ." *Warren,* 669 F. Supp. at 371. This imbalance strongly militates in favor of allowing Respondents to litigate in their home state.

The Judicial System's interest. As discussed above, if this case is jointly litigated, at least two Petitioners will be forced to litigate in a foreign country. The only resolution that allows all Petitioners to litigate in their home countries is to force Respondents to litigate their claims piecemeal against each individual defendant in each of three foreign countries. Such a proposal would make the litigation cost-prohibitive and render Petitioners effectively judgment-proof. Moreover, it would be highly inefficient and fail to serve the cause of judicial economy.

Thus, the judicial system has a strong interest in having these claims litigated together in an appropriate forum. As the North Carolina courts already have general jurisdiction over Goodyear, at least one case will be tried in North Carolina. It is reasonable, given Petitioners' close relationship with Goodyear through their joint activities in North Carolina, to try claims against all of them there.

"*Shared interest of the several states in furthering fundamental substantive social policies.*" This Court may take judicial notice that North Carolina's unemployment rate is currently 9.6%. U.S. Bureau of Labor Statistics, *Unemployment Rates for States*, (Oct. 2010), *available at* http://www.bls.gov/web/laus/laumstrk.htm. It is 10.7% in neighboring South Carolina and 10.0% in Kentucky. *Id.* All three states, therefore, have a critical interest in insuring that manufacturing jobs at Goodyear plants in North Carolina and elsewhere in those states are not sent offshore. As demonstrated below, increased outsourcing to foreign countries is one sure consequence of reversal in this case.

For all of these reasons, Respondents can satisfy the *Asahi* test. The Due Process Clause would, therefore, permit the exercise of general jurisdiction over Petitioners in North Carolina.

III. ADOPTING PETITIONERS' JURISDICTIONAL MODEL WOULD DEVASTATE THE U.S. ECONOMY

Petitioners and *amici* argue that affirming the Court of Appeals' decision or otherwise permitting the assertion of general jurisdiction over Petitioners would destroy international trade and devastate U.S. foreign policy. *See, e.g.*, Brief of the United States ["Government's Brief"] at 28. It won't.

These arguments are all based on a false premise – that the exercise of general jurisdiction here was based solely upon Petitioners' release of a few goods into the "unpredictable currents" of international commerce and their chance arrival in North Carolina. As demonstrated above, it was not. Moreover, these arguments ignore the countervailing damage to the U.S. economy adoption of Petitioners' anachronistic jurisdictional model would inflict.

A. Permitting American Corporations to "Outsource" to Foreign Courts Their Foreign Subsidiaries' Tort Liability Would Accelerate Outsourcing to Foreign Countries of American Manufacturing and Jobs

If this Court reverses the Court of Appeals' decision, it will have rule that foreign subsidiaries' participation in an ongoing, internal supply and distribution enterprises in the forum state (over part of which the forum's courts have already asserted general jurisdiction), combined with substantial numbers of regular sales in the forum by those subsidiaries through that enterprise, are insufficient to warrant the exercise of general jurisdiction over

these subsidiaries by courts in the forum state. Put another way, the Court would have to hold that, by outsourcing parts of its manufacturing and design to subsidiaries located in foreign countries, an American multinational corporation also "outsources" to foreign courts the exclusive right to decide whether those subsidiaries are liable in tort for the injuries caused by the defective products they produce. On the day that decision is announced, American manufacturers will have new and powerful incentive to head for the border.

The location of the forum matters to plaintiffs. As the Court in *McGee* explained, "When claims were small or moderate[,] individual claimants frequently could not afford the cost of bringing an action in a foreign forum – thus in effect making the company judgment proof." 355 U.S. at 223. There is also no question that, because of different regulatory climates and cultures, American courts are perceived by businesses around the world as more generous to plaintiffs and dangerous to corporations. *See infra* note 24. Finally, as discussed above, it is well understood that one purpose of creating subsidiaries is to attempt to limit or insulate a corporation from tort liability. It, therefore, makes sense for a corporation, acting in the interests of it shareholders alone, to try to limit its liability or amenability to suit in this fashion.

By allowing corporations subject to general jurisdiction in the forum to treat what are, in every practical sense, merely its corporate divisions as separate, free-standing foreign companies for jurisdictional purposes, this Court would encourage the latter's proliferation.

In the last decades, American corporations have increasingly moved manufacturing to offshore subsidiaries to avail themselves of lower wage rates and relaxed regulatory and tax climates. *See, e.g.*, Mark Baker, *"The Technology Dog Ate My Job:" The Dog-Eat-Dog World Of Offshore Labor Outsourcing*, 16 FLA. J. INT'L L. 807, 810 (2004). Off-loading tort liability to foreign subsidiaries *and foreign courts* will not only increase the likelihood that manufacturing will be moved offshore, give foreign companies looking to relocate a powerful reason *not* to build their facilities in the United States, but it will give a competitive advantage to American corporations that do outsource their manufacturing and design over those that do not. U.S trade and the U.S. economy will suffer accordingly. As one court explained under similar circumstances:

> Under defendant's theory, the only forum for direct relief from the designer would be Japan. *Adopting the defendant's rationale would encourage manufacturers to form separate, independent organizations for product design.* Thus designers would be insulated from suit except in the jurisdiction in which they physically reside. There is no sound policy supporting such a result. . .

Warren, 669 F. Supp. at 371.

B. No Threatened Trade Apocalypse Will Occur if This Court Affirms

Although Petitioners claim generally that U.S. trade partners would revolt if this Court affirms, those partners would not necessarily object to the exercise of general jurisdiction over Petitioners *on*

these facts. Instead, an expert group at the Hague negotiations has already proposed that the rules for disregarding the independent legal personality of a subsidiary or parent be left to the national law of each contracting state. *See* Catherine Kessedjian, Hague Conference on Private Int'l Law, June 1997, INTERNATIONAL JURISDICTION AND FOREIGN JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS, Prelim. Doc. No. 7 at 72 n.150 (Apr. 1997), *available at* http://www.hcch.net/upload/wop/jdgm pd7.pdf.

Moreover, international business' purported disenchantment with the American judicial system cannot reasonably be blamed on the potential outcome in this case. Some foreign corporations *already* fear litigating in American courts.[24] Likewise, even trade partners who impose "exorbitant" jurisdictional rules on American businesses[25] have long complained when general

[24] Patrick Borchers, *A Few Little Issues For The Hague Judgments Negotiations*, 24 BROOKLYN J. INT'L L 157, 160 (1998)

[25] France permits anyone domiciled in France to sue anyone, anywhere, over anything in the French courts. *See* Code civil [C. civ.], arts. 14-15 (Fr.), *quoted in* Kevin Clermont, *Jurisdictional Salvation and the Hague Treaty*, 85 CORNELL L REV. 89, 92 & n. 15 (1999). Germany bases jurisdiction on the presence of a defendant's assets in Germany; England on personal service in the U.K. *See* Freidrich Juenger, *A Hague Judgments Convention?*, 24 BROOKLYN J. INT'L L. 111, 115-16 (1998). Pursuant to the Brussels and Lugano trade treaties, these practices have migrated to other signatories, including Luxembourg and Belgium. *See* Clermont, *supra*, at 92, n.16.

jurisdiction is asserted over nonresident corporations under certain circumstances.[26]

Petitioners and *amici* also suggest that permitting the exercise of jurisdiction here would discourage distribution of foreign goods in the U.S. *See* Government's Brief at 30. With the U.S. trade deficit looming at $44 billion, that may not be a bad thing.[27] Yet there is little actual likelihood that *imports* would be discouraged given the unique facts of this case and of most cases in which general jurisdiction is alleged. The number of actual cases in which courts have exercised general personal jurisdiction over nonresident defendants is quite small. *See, e.g.,* Mary Twitchell, *The Myth of General Jurisdiction*, 101 HARV. L. REV. 610, 630-31 (1988) (counting actual cases).

Commentators have also concluded that "the 'unitary business' standard turning on 'functional integration' imposes relatively *tight boundaries to*

[26] Clermont, *supra* note 25, at 96-97 General jurisdiction based on minimum contacts with the forum is not the only object of derision in foreign capitols. As one commentator explained:

> [G]eneral jurisdiction triggered merely by the defendant's temporary presence in the forum (transient rule) . . . which was confirmed by the United States Supreme Court [in *Burnham*] as an exercise in conformity with contemporary notions of American due process, *lacks conformity with virtually all international standards. . . Even the American Law Institute views it as a transgression of international law.*

Joachim Zekoll, *Could a Treaty Trump Supreme Court Jurisdiction Doctrine? The Role and Status of American Law in the Hague Judgments Convention Project*, 61 ALB. L. REV. 1283, 1296-97 (1998).

[27] *See* U.S. Census Bureau, *U.S. International Trade in Goods and Services Highlights*, (Nov 10, 2010), *available at* http://www census.gov/indicator/www/ustrade.html

define the type of multinational enterprise that are included, and is *limited* to particular models of managerial direction and of economic integration." Blumberg, *The Corporate Entity, supra* note 15, at 355 (emphasis supplied). For these reasons, general jurisdiction is, as practical matter, "[s]eldom properly available against a defendant from abroad." Clermont, *supra* note 25, at 115.

Finally, the pervasive presence of Goodyear in North Carolina and the highly-integrated nature of its distribution network also militate against any flood of cases. The risk of jurisdiction and liability in such cases is not, therefore, sufficiently great to affect overall corporate behavior.

Petitioners and *amici* also argue that American *exports* would be adversely affected if this Court affirms. None has explained, however, how or why that would actually occur, particularly since the focus of this case is on foreign goods *imported* into the United States through a highly-integrated multinational network run by an American company. Moreover, by encouraging American businesses to take their manufacturing overseas to avoid domestic tort liability, *reversal* of the Court of Appeals' decision is far more likely to damage American exports by insuring that there will simply be fewer manufactured goods available to export.

The Government finally suggests that using tire markings as a key "contact" for jurisdictional purposes "pose[s] a threat to U.S. interests." Government's Brief at 31. The argument assumes first that the Court actually did that. At best, the Court of Appeals used the markings, if at all, to show, "at an absolute minimum, the manufacturer

contemplated that the tire [that caused the accident] might be sold in this country." PA25a.

Moreover, the Government confuses actual compliance with U.S. standards with *advertising* such compliance by stamping information on the face of the tires. The only thing, if anything, that foreign trade partners might refrain from doing then, is stamping their otherwise compliant products.

The remaining *amici* complaints in this area are paens to the sanctity of the corporate form and limited liability. This case, however, addresses jurisdiction, not liability. The standards and policy considerations for determining when a court will disregard the corporate form are less when the only question is whether corporations are amenable to suit in the forum. *See, e.g., Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 903 (2d Cir. 1981) (jurisdictional inquiry for piercing the corporate veil should not require fraud even if test for liability does); *Berry*, 428 F. Supp.2d at 556.

Second, while corporate fragmentation may provide corporations themselves with certain other advantages, viewed in broader economic terms, limiting corporate tort liability is not a universal good. By creating small and relatively judgment-proof subsidiaries, corporations externalize the risks associated with producing defective or dangerous products. All corporate benefits thus come at the expense of victims, taxpayers [through social insurance programs], and third-party insurers. In fact, "such externalization of costs is almost universally regarded as highly undesirable."[28]

[28] Blumberg, *The Corporate Entity*, *supra* note 15, *at* 342 (citing Guido Calabresi, *Some Thoughts on Risk Distribution and the*

Worse, because risk-shifting lowers or eliminates the actual cost of negligent behavior, eliminating or shifting tort liability may cause corporations to lose powerful economic incentives to produce safer products. *See, e.g., Schafer v. American Cyanamid Co.*, 20 F.3d 1, 3 (1st Cir. 1994) (Breyer, J.). Thus, dangerous behavior is not sufficiently deterred. In fact, one commentator has suggested that the loss of limited tort liability resulting from merging one corporation's activities with those of a constituent corporation would be advantageous.

> [t]here is widespread agreement that just such an elimination of limited liability would be an advantageous development. The group would then be responsible for all costs of the enterprise being conducted by it and the group would lose its present capacity to externalize some of its costs by limiting its liability for torts of constituent companies. Such a change would dispose of one of the principal criticisms of the economists with respect to limited liability.[29] Further, the availability of insurance for such increased tort exposure

Law of Torts, 70 YALE L.J. 499, 500-07, 514-17 (1961); Howard Klemme, *The Enterprise Liability Theory of Torts*, 47 COLO. L. REV. 153, 158 (1976); George Priest, *The Invention of Enterprise Liability: A Critical History of the Intellectual Foundations of Modern Tort Law*, 14 J. LEG. STUD. 461, 463 (1985)).

[29]*See* Phillip Blumberg, *Limited Liability and Corporate Groups*, 11 J. CORP. L. 573, 616-19 (1986); RICHARD POSNER, ECONOMIC ANALYSIS OF THE LAW 372 (3d ed. 1986); Frank Easterbrook & Daniel Fischel, *Limited Liability and the Corporation*, 52 U. CHI. L. REV. 89, 103, 107, 112 (1985), Robert Clark, *The Regulation of Financial Holding Companies*, 92 HARV. L. REV. 789, 875 (1979).

> provides a ready means for the group to restrict its exposure.

Blumberg, *The Corporate Entity*, *supra* note 15, at 342. There is, therefore, no sound economic justification for permitting corporations unilaterally to choose whether or where they will be amenable to suit for their tortious acts.

Nor is such special status justified by the need for predictability in making investment decisions. Predictability is not at risk where, as here, the question involves the merger of two or more corporations' acts. Practically speaking, the subsidiary's actions have been initiated and taken by the parent itself. For jurisdictional purposes, the two entities are identical and what is predictable for one is predictable for the other. *See generally* Brilmayer & Paisley, *supra*, at 36-37.

C. Trial Courts Have Adequate Tools to Control Threatened Forum-Shopping

Petitioners and *amici* warn that permitting the exercise of general jurisdiction in this case will result in forum-shopping on a global scale. This Court, however, has explicitly sanctioned forum-shopping – albeit by defendants – a practice reversal here would *increase* as corporations seek the most favorable foreign jurisdictions in which to locate their manufacturing operations. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 252-53 n.19 (1981) ("We recognize . . . that [Defendants] may be engaged in *reverse forum-shopping*. However, this possibility ordinarily should not enter into a trial court's analysis of the private interests . . .").

Second, forum-shopping arguments presuppose that there are no other checks on a courts' jurisdiction. In fact, there are many. In *Sinochem Int'l Co. v. Malay. Int'l Shipping Corp.*, 549 U.S. 422, 432 (2007), this Court held that courts may dispose of actions by *forum non conveniens* dismissal first, bypassing questions of personal jurisdiction, when considerations of convenience, fairness, and judicial economy so warrant. Moreover, this Court also held that a foreign plaintiff's choice of forum deserves much less deference in deciding such motions. *Piper Aircraft*, 454 U.S. at 256.

North Carolina, like other states, also has venue rules that restrict suits by outsiders. *See* N.C. GEN. STAT. § 1-80 [Foreign Corporations]. Choice-of-law principles also strongly influence where and whether certain claims may be pursued. As one commentator noted, if one forum attempts to use "an idiosyncratic and expansive attribution or merger rule in the context of the jurisdictional determination, it involves a choice of law decision that much pass muster like any other." Brilmayer & Paisley, *supra*, at 37.

Finally, if these controls provide too little protection against potential forum-shopping, this Court could add to its due process considerations the plaintiff's state of residence.[30] In fact, the Court in *Keeton* noted that "plaintiff's residence may well play an important role in determining the propriety of

[30] *See World-Wide Volkswagen*, 444 U.S. at 308 (Brennan, J., dissenting) (jurisdictional principles "focus[ed] exclusively on the rights of defendants, may be outdated"); Alfred Hill, *Choice of Law and Jurisdiction in the Supreme Court*, 81 COLUM. L. REV. 960, 984 (1981), Twitchell, *supra*, at 678 n. 306

entertaining a suit against a defendant in the forum," but confined that role to enhancing defendant's contacts with the forum 465 U.S. at 780. This Court could reasonably expand that role.

Petitioners' unfounded fear of Taiwanese plaintiffs' suing Indian corporations in North Carolina over employment contracts entered into in Iceland and performed in Israel is, therefore, both overblown and easily assuaged. Such baseless fears, however, do not justify the grim reality of forcing grieving parents to go overseas – again – to hold accountable for the violent death of their child the design and manufacturing arms of an American company that operate seamlessly, continuously, systematically, substantially, and profitably in their home state.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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REPLY BRIEF

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IN THE

Supreme Court of the United States

GOODYEAR DUNLOP TIRES OPERATIONS, SA, GOODYEAR LASTIKLERI T.A.S., AND GOODYEAR DUNLOP TIRES FRANCE, SA,

Petitioners,

v.

EDGAR D. BROWN AND PAMELA BROWN, CO-ADMINISTRATORS OF THE ESTATE OF JULIAN DAVID BROWN, AND KAREN M. HELMS, ADMINISTRATRIX OF THE ESTATE OF MATTHEW M. HELMS,

Respondents.

On Writ of Certiorari to the North Carolina Court of Appeals

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CORPORATE DISCLOSURE STATEMENT

The corporate disclosure statement included in Petitioners' opening brief, pursuant to Supreme Court Rule 29.6, remains accurate.

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In our opening brief, Petitioners showed that both historical and modern jurisdictional principles preclude North Carolina's exercise of general jurisdiction based on the mere sale of Petitioners' products in North Carolina—regardless of how those products reached the state.

As we explained (at 13-28), this Court's decisions before *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), have continuing vitality for general jurisdiction. Under those cases, any exercise of jurisdiction over an unconsenting corporation required significant physical presence in the state. And this Court specifically held in *Consolidated Textile Corp. v. Gregory*, 289 U.S. 85, 88 (1933), that in-state sales of an absent corporation's products did not establish the necessary "presence"—even when the sales were by a wholly controlled subsidiary. Just as *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516 (1923), was dispositive in *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984), *Gregory* and similar cases are dispositive here. Indeed, the facts here are even more compelling, because in *Gregory* the defendant directly caused the sales in the forum; here, the court below found that Petitioners took no "affirmative action" to cause the sales and were "not directly responsible" for them, Pet. App. 22a.

Petitioners also showed (at 29-55) that under modern due-process analysis, mere sales of a corporation's products in the forum cannot justify general jurisdiction. A state has no legitimate basis for exercising global authority over a defendant absent an intimate connection between the defendant and the state going far beyond mere sales. Moreover,

Petitioners cannot reasonably have anticipated such an unprecedented application of general jurisdiction; haling a defendant into court on such facts is presumptively inconvenient and unfair; and upholding jurisdiction here would amount to approving general jurisdiction in every state over every significant seller of products.

Respondents' brief abandons the holding below that Petitioners' stream-of-commerce contacts suffice for general jurisdiction. Instead, Respondents now argue for piercing the corporate veil between Petitioners and The Goodyear Tire & Rubber Company ("Goodyear TRC"), to hold Petitioners responsible for Goodyear TRC's distribution of Petitioners' tires to North Carolina. Specifically, Goodyear TRC sold the tires to independent dealers in North Carolina from its warehouses in Ohio, Pennsylvania, and Kansas. *See* JA 255-56, 264.

This new veil-piercing argument, however, misses the point: even if Petitioners *were* deemed directly responsible for the distribution to North Carolina, such sales alone cannot establish general jurisdiction. And, in any event, Respondents' new argument has been waived; has no support in the record; is legally erroneous; and is contrary to the finding below that Petitioners were "separate corporate entities" that did not cause the distribution of their tires in North Carolina. Pet. App. 22a-23a.

ARGUMENT

I. CONTROLLING PRE-*INTERNATIONAL SHOE* DECISIONS PRECLUDE GENERAL JURISDICTION BASED ON MERE SALES OF A DEFENDANT'S PRODUCTS IN THE FORUM.

As Petitioners showed (at 13-28), deeply rooted standards continue to limit general jurisdiction, as in *Helicopteros*, in which this Court found a pre-*International Shoe* case dispositive in precluding general jurisdiction. 466 U.S. at 417. The decision below conflicts with those historical standards, which consistently required that the defendant have considerable physical presence in the state. And it is squarely contrary to *Gregory*, which held that a defendant was not "present" in Wisconsin based on mere sales of its products there even though the sales were through "a subsidiary wholly controlled by" the defendant acting as its "agent." 289 U.S. at 88 (internal quotation marks omitted). Further, these historical standards are supported by this Court's post-*International Shoe* decisions, which have upheld general jurisdiction only where suit was brought in "the corporation's principal, if temporary, place of business." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779 n.11 (1984).

Respondents do not contest that they cannot satisfy these historical standards, even under their newly minted veil-piercing theory. They argue only (at 18-21) that these historical holdings were

"[r]ejected" by *International Shoe*.[1] This is demonstrably incorrect.

A. Respondents rely (at 19-20) on the statement in *International Shoe* that to say a corporation is "so far 'present' [in a forum] as to satisfy due process . . . beg[s] the question to be decided." 326 U.S. at 316. But in saying this, "the Court was not overruling [its] earlier precedents," Philip B. Kurland, *The Supreme Court, the Due Process Clause and the In Personam Jurisdiction of State Courts*, 25 U. Chi. L. Rev. 569, 589 (1958), but rather was explaining them in a new way—one that permitted the development of specific jurisdiction. Moreover, while *International Shoe* and its progeny have relaxed the limits on *specific* jurisdiction, they have never altered the established scope of general jurisdiction. *See Burnham v. Superior Court*, 495 U.S. 604, 610 (1990) (plurality opinion).

Indeed, *International Shoe* itself relied on many of the earlier cases, 326 U.S. at 317-19, and it describes the general-jurisdiction standard consistently with the historical requirement of significant physical presence: *International Shoe* required "continuous corporate operations *within a state*" that are "so *substantial* and of *such a nature* as to justify" general jurisdiction. *Id.* at 318 (emphasis added). The

[1] Respondents' veil-piercing argument contends only that Petitioners should be deemed directly responsible for Goodyear TRC's distribution of their tires to North Carolina, *see* Resps.' Br. 40-43 (basing "continuous and systematic" contacts solely on tire distribution), not that Petitioners should be deemed physically present in North Carolina through Goodyear TRC.

illustrative cases it cited, furthermore, were all decided under the "presence" rubric, and involved defendants with significant in-state presence. *See Seymour v. Parke, Davis & Co.*, 423 F.2d 584, 586 n.1 (1st Cir. 1970) (describing cases).

B. Respondents also cannot account for this Court's subsequent general-jurisdiction jurisprudence. Most notably, *Helicopteros* treated a historical "presence" case (*Rosenberg*) as precluding general jurisdiction on analogous facts. 466 U.S. at 417; Petrs.' Br. 14-15. Respondents' rejoinder that the Court cited *Rosenberg* for a "limited proposition" (at 25 & n.9) is no response at all. The "limited proposition" (which Respondents conspicuously omit to describe) was precisely the proposition that supports Petitioners: that *Rosenberg* was dispositive in precluding general jurisdiction. *Helicopteros*, 466 U.S. at 418. The footnote cited by Respondents "limits" this holding only by reserving the question whether it would be equally applicable to *specific* jurisdiction—a limitation of no relevance here. *Id.* at 418 & n.12.

Respondents have similar difficulty with *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). They attempt (at 21-22) to depict the corporate presence in that case as minimal, but fail even to address that in *Perkins* the forum was "the corporation's principal, if temporary, place of business." *Keeton*, 465 U.S. at 779 n.11. And *Perkins*, like *International Shoe*, relied on earlier "presence" cases. 342 U.S. at 445-47 & n.6.

Respondents also cite (at 27-28) ruminative language from a footnote in *Burnham*, but that footnote expressly warned that "[w]e express no

views on these matters," 495 U.S. at 610 n.1. And the substance of the *Burnham* plurality opinion refutes Respondents' claim that *International Shoe* displaced historical limits on general jurisdiction, as it emphasizes that historical standards have been superseded "*only* with respect to suits arising out of the absent defendant's contacts with the State." *Id.* at 610 (emphasis added).

C. Respondents lastly cite (at 22-27) multiple *specific*-jurisdiction cases as purportedly proving "the evolution from the concept of 'presence.'" But it is undisputed that "presence" is no longer relevant to specific jurisdiction. As illustrated by *Helicopteros*, however, historical "presence" decisions *do* continue to limit the scope of *general* jurisdiction. Indeed, the *Helicopteros* footnote Respondents cite makes precisely this distinction, reaffirming *Rosenberg* with respect to general jurisdiction but not specific. 466 U.S. at 418 n.12.

The distinction the Court has drawn is a logical one: Specific jurisdiction turns on contacts related to the dispute, an inquiry wholly different from the defendant-focused "presence" analysis. In contrast, general jurisdiction is dispute-blind, and—like the historical "presence" inquiry—turns on the defendant's broader relationship to the forum. It is therefore unsurprising that *Helicopteros* found *Rosenberg*'s presence holding dispositive as to general jurisdiction.

Respondents' reference to "'the tremendous growth of interstate business activity'" (at 19-20 (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958))), is equally misplaced. That increased interstate activity was directly addressed by the

development of specific jurisdiction. *See, e.g.*, *Hanson*, 357 U.S. at 250-51; *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957). Respondents fail to explain the relevance of such changes to *general* jurisdiction. If anything, the growth of specific jurisdiction merits a *narrowing* of general. *See* Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1143-44, 1179 (1966).[2]

Finally, Respondents quote the statement in *Burger King Corp. v. Rudzewicz* that the Court has "rejected the notion that an absence of physical contacts can defeat personal jurisdiction" (at 26 (quoting 471 U.S. 462, 476 (1985)) (emphasis omitted)). But Respondents offer no reason why this specific-jurisdiction principle should extend to general jurisdiction, and cite no case of this Court permitting general jurisdiction in the absence of physical presence.

II. MODERN DUE-PROCESS ANALYSIS EQUALLY PROHIBITS THE STATE FROM EXERCISING GENERAL JURISDICTION BASED MERELY ON SALES OF A DEFENDANT'S PRODUCTS THERE.

As Petitioners demonstrated (at 29-45), even if the historical "presence" cases were not dispositive, exercising general jurisdiction based on mere sales in

[2] Indeed, as we explained (at 15 n 3), general jurisdiction under *International Shoe* typically requires considerably *more* than corporate "presence" under historical standards; such "presence" is properly understood as necessary but not sufficient for general jurisdiction

a state violates due process—regardless of whether the defendant sells the products directly or they reach the state through the stream of commerce.

A. We showed (at 30-36) that a state may legitimately exercise adjudicative power over a defendant's worldwide conduct—i.e., general jurisdiction—only when the defendant is so closely connected to the state as to be analogous to a citizen or resident. *See Milliken v. Meyer*, 311 U.S. 457, 462-64 (1940) (upholding jurisdiction on ground that "the authority of a state over one of its citizens is not terminated by the mere fact of his absence"); *Perkins*, 342 U.S. at 447-48 (jurisdiction in corporation's principal place of business). Whatever the precise line, at a minimum, exercising general jurisdiction over foreign causes of action based on mere sales in the forum goes "beyond the limits imposed on [states] by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

Respondents deem it sufficient (at 41) that the three Petitioners combined allegedly "enjoyed tens of thousands of tire sales in North Carolina." But they do not explain how—even if Petitioners can be deemed to have "enjoyed" sales made by a separate corporate entity—the distribution of a fraction of Petitioners' tires can give the state a legitimate basis for judicial authority over Petitioners' worldwide activities. A state may "exact *reciprocal* duties" from those who enjoy its benefits, *Milliken*, 311 U.S. at 463 (emphasis added), but imposing global jurisdiction on this basis goes far beyond the reciprocal.

Respondents also fail to address that sales of an out-of-state corporation's products in a state are

interstate or foreign commerce. As Petitioners showed (at 35-36), a state has no legitimate interest in leveraging a defendant's interstate commerce within the state into a basis for general jurisdiction. *See Bendix Autolite Corp. v. Midwesco Enters., Inc.*, 486 U.S. 888, 895 (1988).

Moreover, Respondents' suggestion that general jurisdiction turns on the *quantity* of sales conflicts with *International Shoe*, which rejected the idea that jurisdiction turns on "whether the activity . . . is a little more or a little less." 326 U.S. at 319. Rather, jurisdiction "depend[s] upon the *quality* and *nature* of the activity." *Id.* (emphasis added). As the United States correctly notes, this requires contacts that are "systematic" in the sense of "'form[ing] a system'" that is "'united by some form of regular action or interdependence'"—as illustrated in *Perkins*, in which the contacts "formed the very embodiment of the defendant's corporate control structure." U.S. Br. 23 (quoting *Webster's New International Dictionary* 2562 (2d ed. 1958)).

Helicopteros supports this point, in that it framed the relevant inquiry as whether the defendant's contacts "constitute[d] the kind of continuous and systematic general business contacts . . . found to exist in *Perkins*." 466 U.S. at 416. And the contacts in *Perkins* were the "systematic" ones of a corporation with its "principal . . . place of business" in the forum. *Keeton*, 465 U.S. at 779 n.11. *Helicopteros* also rejected the notion that "mere purchases, *even if occurring at regular intervals*," could establish general jurisdiction, 466 U.S. at 418 (emphasis added), notwithstanding that the purchases there exceeded $4 million and covered 80%

of the defendant's helicopter fleet, *id.* at 411. *Helicopteros* thus confirms that general jurisdiction requires a particular *type*, and not just a particular *quantity*, of contacts. Respondents offer no reason why mere sales in the forum are any more adequate than the "mere purchases" rejected in *Helicopteros*.

Finally, even if it were possible to hypothesize a case in which a corporation's sales in a state were so central to the corporation as to justify general jurisdiction, this would not be it. Respondents have offered no evidence that the quantity of Petitioners' tires sold in North Carolina—or even the United States—was more than a tiny fraction of their business.

B. Petitioners further explained (at 36-38) that general jurisdiction based on in-state sales violates the requirement that the defendant be able to "reasonably anticipate being haled into court" in the forum. *World-Wide Volkswagen*, 444 U.S. at 297. This is particularly apparent in light of this Court's historical cases, and the vast gulf between this case and *Perkins*—the only previous one to uphold general jurisdiction over an out-of-state corporation. *See Burnham*, 495 U.S. at 637 (Brennan, J., concurring in the judgment) (historical practice highly relevant to "reasonable expectations").

Respondents assert (at 31) that lower courts "[r]egularly" exercise general jurisdiction in purportedly similar circumstances. But they cite no case upholding general jurisdiction over an out-of-state corporation based solely on sales in the forum—even if the sales were through a "highly integrated enterprise." To the contrary, courts generally find mere sales, without physical presence, insufficient for

general jurisdiction. *See generally* 16 Moore's Federal Practice § 108.41[3] (3d ed. 2010) (general jurisdiction "typically requires the defendant to have an office in the forum state"); *see also, e.g.*, *Madara v. Hall*, 916 F.2d 1510, 1516 n.7 (11th Cir. 1990) (rejecting in-state "concerts and record sales" as basis for general jurisdiction, as otherwise defendant would be "amenable to suit in all the states of the union on any cause of action").

Moreover, Respondents' veil-piercing argument creates an additional "reasonable anticipation" issue. As detailed below, *see infra* Part III.D, adopting their "single business enterprise" theory would require overruling this Court's longstanding cases.

C. In response to Petitioners' showing (at 40-41) that it is presumptively inconvenient, and thus unreasonable, to require a corporation to defend unrelated cases in the forum simply because its products are sold there, Respondents assert (at 46) that corporations engaged in an integrated enterprise "suffer little burden in litigating" wherever their affiliates sell their products. This overlooks that separate corporations will typically—as here—have separate employees. *See* JA 155, 165, 173, 184. And an affiliate's local sales do not temper the inconvenience of forcing such employees to travel to the forum for depositions and/or trial. Nor does it mitigate the inconvenience of litigating unrelated cases wherever the defendant's products are sold, when all of the key witnesses and evidence are elsewhere—potentially, as in this case, thousands of miles away.

D. Lastly, Respondents offer no persuasive response to Petitioners' showing (at 41-45) that

permitting general jurisdiction on these facts will likely result in rampant forum shopping.

Contrary to Respondents' argument (at 59) that this Court "explicitly sanctioned" forum shopping in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), that case *disapproved* forum shopping by holding that the plaintiff had no vested right to her choice of an inconvenient but more favorable forum. *Id.* at 252-53 n.19. Indeed, the Court supported its decision by warning of the risk of plaintiffs increasingly filing essentially foreign claims in American courts. *Id.* at 252 & n.18.

Respondents also cite (at 60) purported "checks" on forum shopping. But the "discretionary nature" of *forum non conveniens*, and "the multifariousness of [its] factors," make it impossible to "count on the fact that jurisdiction will be declined." *Am. Dredging Co. v. Miller*, 510 U.S. 443, 455 (1994). Moreover, some states narrowly restrict its use. *See, e.g., AT&T Corp. v. Sigala*, 549 S.E.2d 373, 377 (Ga. 2001). Similarly, the venue rules Respondents cite (at 60) vary from state to state, and hardly provide meaningful protection against forum shopping.

Lastly, Respondents suggest (at 60-61 (citing *Keeton*, 465 U.S. at 780)) that this Court could limit forum shopping by creating a new category of quasi-general jurisdiction available—in some unidentified circumstances—in the plaintiff's home state. But the plaintiff's residence has never been relevant to general jurisdiction, *see Perkins*, 342 U.S. at 438, which focuses solely on the relationship between the defendant and the state. Even as to specific jurisdiction, moreover, the plaintiff's residence may be relevant only in that it "may be the focus of the

activities of the defendant out of which the suit arises," *Keeton*, 465 U.S. at 780—a consideration irrelevant to general jurisdiction.

III. RESPONDENTS' NEWLY MINTED VEIL-PIERCING THEORY IS BOTH WAIVED AND MERITLESS.

In any event, even if mere sales of a corporation's products in the forum could suffice for general jurisdiction, Respondents' new veil-piercing argument for attributing Goodyear TRC's sales to Petitioners fails on multiple grounds.

A. Respondents Failed To Raise Their Veil-Piercing Argument Below Or In Opposition To Certiorari.

Respondents' veil-piercing theory fails at the outset because it was never previously raised. None of Respondents' briefs below made a single reference to "veil piercing," "enterprise liability," "alter ego," or any similar argument, *see* JA 333-50, 363-94, 456-92, 520-43; moreover, the parties developed no record on the issue, and the courts below had no opportunity to address it. Accordingly, this argument has been waived. *See Sprietsma v. Mercury Marine*, 537 U.S. 1, 56 n.4 (2002); *United States v. Alvarez-Sanchez*, 511 U.S. 350, 360 n.5 (1994). Respondents also cannot raise the argument because it was omitted from their Brief in Opposition to certiorari. *See Granite Rock Co. v. Int'l Bhd. of Teamsters*, 130 S. Ct. 2847, 2861 (2010).

Indeed, in the trial court, far from arguing for ignoring corporate form, Respondents exclusively pressed the "stream of commerce" theory that they

now depict as a mere slip of the North Carolina Court of Appeals' pen. *See* JA 335-49.

On appeal, Respondents disavowed their stream-of-commerce theory, but again made no veil-piercing argument. Rather, they argued that Petitioners *themselves* had purposefully directed activities toward North Carolina, depicting Goodyear TRC not as an alter ego or "merged" entity, but as a mere distributor—to wit, Petitioners "'used their Goodyear parent and affiliated companies to distribute the tires they manufactured to the United States and North Carolina.'" JA 483-84 (quoting Pet. App. 33a). To prove Petitioners' purported intention to exploit the North Carolina market, Respondents argued that the tire at issue was "manufactured and labeled in such a way as to allow it to be sold in the United States, including North Carolina." JA 479. And, although Respondents referred to Goodyear TRC and its subsidiaries as "a highly integrated worldwide business," JA 483, they did so to support their claim that Petitioners "knew they were manufacturing products for sale to the United States," *id.*, not as part of any argument for ignoring corporate form. *See also* JA 484 (quoting Pet. App. 33a) (Petitioners "'knew or should have known'" their tires were being sold in North Carolina).

Likewise, when Petitioners sought to appeal to the North Carolina Supreme Court, Respondents again argued that Petitioners "deliberately manufacture thousands of tires they know will be shipped to the U.S., including North Carolina, for sale." JA 537; *see* JA 542. Respondents never argued below for any veil-piercing or enterprise

theory, and the same is true of Respondents' Brief in Opposition. They cannot do so now.

B. Respondents' New Argument Is Squarely Contrary To The Decision Below.

Respondents depict (at 12-15, 35-36) the decision below as resting on their veil-piercing theory rather than stream-of-commerce principles. Not only is this depiction untenable, but the findings below are flatly contrary to Respondents' veil-piercing theory.

As demonstrated in our Reply Brief in support of certiorari (at 5-6), there is no colorable basis for claiming that the decision was not based on stream-of-commerce principles. In addition to its extended discussion of the stream-of-commerce doctrine, Pet. App. 14a-20a, the court below *twice* emphasized that the decisive issue was "whether [Petitioners] have purposefully injected their product into the stream of commerce without any indication that they desired to limit [its] distribution . . . to exclude North Carolina." *Id.* at 20a (internal quotation marks and alterations omitted); *id.* at 29a. Furthermore, the court concluded the decision by stating that it was following "the principles outlined by" four North Carolina cases—*all of which were stream-of-commerce cases.* *Id.* at 29a (citing cases). Respondents' claim to the contrary is astonishing.

But that is not all: the findings below squarely conflict with Respondents' new argument that Petitioners, as part of an "integrated enterprise," should be deemed directly responsible for Goodyear TRC's distribution of their products to North Carolina. The opinion below expressly found that Petitioners, "*as separate corporate entities*, were *not*

directly responsible for the presence in North Carolina of tires that they had manufactured." Pet. App. 22a-23a (emphasis added). Respondents' new argument is contrary to this finding.

C. The Record Does Not Support Any Conceivable Veil-Piercing Theory.

Unsurprisingly, in light of their failure to raise this argument below, Respondents made no record on corporate governance, corporate structure, corporate financial relationships, day-to-day control, or any of the other issues relevant to veil piercing. The record thus focuses almost entirely on the chain of distribution for the small portion of Petitioners' tires sold in the United States. This falls far short of what is necessary even under Respondents' radically permissive veil-piercing theory.

Indeed, Respondents—who bear the burden of establishing jurisdiction, *see* 4 Wright, *Federal Practice & Procedure* § 1067.6 (3d ed. 2002)—have no evidence even for the "factors" they depict as "significant" in their brief (at 32): "whether the subsidiary is an independent decision-making body; whether its administrative organization is complete; whether the parent and subsidiary project an[] integrated posture to the public; and whether they exchange information, personnel and group resources."

Respondents' attempts to fill this yawning evidentiary gap with sheer assertion and characterization (or mischaracterization) fail to ameliorate the problem. For example, they assert (at 6) that Petitioners have "surrender[ed] their status as independent and free-standing businesses,"

because, among other things, they "did not directly solicit sales of their own products in North Carolina *or anywhere else*." The record, however, indicates only that Petitioners did not solicit sales or advertise *in the United States*. It is silent on Petitioners' foreign operations—which are the bulk of their business.[3] More importantly, Respondents cite no authority for the notion that a manufacturer's status as an independent legal entity turns on whether it "directly solicit[s] sales."

Similarly, Respondents appear to attach significance to their assertion (at 41-42) that Petitioners were the "sole source" in the United States for "horse and boat trailers, cement mixers, [or] the like." This, too, is both inaccurate and irrelevant. Petitioners were *not* the sole source. *See* JA 243 (citing Slovenia and Germany).[4] And that Goodyear TRC imported tires for "vehicles that we

[3] Respondents make this unsupported claim repeatedly (at 6, 7, 13, 42), citing Goodyear TRC testimony. But the snippet they quote (that Goodyear Turkey "doesn't control any distribution") responded to a question about "who would actually import [the tires] *into the U.S.*" JA 256 (emphasis added). Indeed, the witness—who was specifically designated to testify about distribution into the United States—made clear that he was otherwise unfamiliar with how Goodyear Turkey "handled their distribution or their customer base." JA 266.

[4] These misstatements of the record are two of many. One more worth noting is the repeated suggestion (at 8, 9, 17, 42) that the tires distributed to North Carolina were manufactured by Petitioners "at Goodyear's request." Nothing in the record indicates that Goodyear's requests were filled by manufacturing new tires rather than from existing inventory. *E.g.*, JA 227-28.

just do not sell here in the United States normally," JA 242, has no bearing on whether Petitioners are distinct corporate entities.

Respondents' various assertions seek to depict Petitioners as part of an "integrated" distribution system. But even Respondents' radical (and widely rejected) "enterprise" theory of veil piercing requires far more. Respondents rely (at 32-34) primarily on Texas law, and even the Texas courts that adopted that theory—before it was definitively rejected, *see infra* Part III.D—required consideration of numerous factors, as to most of which Respondents have not a scintilla of proof. Those factors include:

> (1) common employees, (2) common offices, (3) centralized accounting, (4) payment of wages by one corporation to another corporation's employees, (5) common business name, (6) services rendered by the employees of one corporation on behalf of another corporation, (7) undocumented transfers of funds between corporations, and (8) unclear allocation of profits and losses between corporations.

PHC-Minden, L.P. v. Kimberly-Clark Corp., 235 S.W.3d 163, 173-74 (Tex. 2007) (describing "single business enterprise" approach).

In short, even the most radically permissive corporate-attribution theory has no record support.

D. Respondents' Jurisdictional Veil-Piercing Theory Is Incompatible With This Court's Cases And Due Process.

Respondents' novel "enterprise" theory of jurisdictional veil piercing is not only factually but

also legally baseless. Even when a corporate parent and subsidiary are involved, "[e]ach defendant's contacts with the forum State must be assessed individually." *Keeton*, 465 U.S. at 781 n.13. Moreover, this Court has long held that even "merely formal" corporate separation must be respected in this context, so long as the separation is "real . . . . not pure fiction." *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 337 (1925). Although it is unclear to what extent *Cannon* itself expressed a due-process principle, *Cannon*'s corporate-separation principle was endorsed in *Gregory*, a Fourteenth Amendment due-process ruling. *See* 289 U.S. at 86, 88; *see also People's Tobacco Co. v. Am. Tobacco Co.*, 246 U.S. 79, 87 (1918); *Peterson v. Chi., Rock Island, & Pac. R.R. Co.*, 205 U.S. 364, 391-92 (1907).

1. Respondents assert (at 38) without explanation that *International Shoe* "effectively overruled" these cases. This is plainly incorrect, as *Keeton* cited *Gregory* and *Peterson* as good law, 465 U.S. at 781 n.13, forty-four years after *International Shoe*—which, in any event, said nothing about corporate separation.

Respondents also protest (at 39) that *Gregory* and *Cannon* did not involve "a highly-integrated enterprise." This, too, is incorrect. In *Gregory*, the defendant sold products in the forum solely through a "wholly controlled" subsidiary that was its "agent." 289 U.S. at 88 (internal quotation marks omitted). And in *Cannon*, the defendant "dominate[d]" the subsidiary and used it as "the instrumentality . . . to market [its] products within the State." 267 U.S. at 334-35.

Nor do the Court's modern cases "embrace[] the idea of attribution or merger for jurisdictional purposes." Resps.' Br. 29-30. As one of the cited cases emphasizes, the only attribution that has been permitted is in straightforward cases of agency, where the defendant has actively directed the contacts. *See Burger King*, 471 U.S. at 479 n.22 (activities "carried on in behalf of an out-of-state party . . . may sometimes be ascribed to the party, *at least where he is a primary participant in the enterprise and has acted purposefully in directing those activities*") (emphasis added) (internal quotation marks and citation omitted).

None of Respondents' other cases is to the contrary. *International Shoe* concerned a corporation that *itself* "employed . . . salesmen" in the forum. 326 U.S. at 313. *Perkins* concerned a corporation conducting its *own* in-state activities. 342 U.S. at 447-48. And in *United States v. Scophony Corp.*, 333 U.S. 795 (1948)—which was not a personal-jurisdiction case—the parent's own agents created the necessary contacts. *Id.* at 814-16.

Lastly, Respondents cite (at 44-45) two unrelated legal doctrines. But the "unitary business" doctrine of state taxation merely allows a particular method of calculating taxes on entities operating *within* the state, when they are part of a larger enterprise. It does *not* permit the state to tax the out-of-state entities themselves. *See, e.g.*, 1 J. Hellerstein & W. Hellerstein, State Taxation ¶ 6.13, p. 6-86 (3d ed. 2006). And labor law's "integrated enterprise" test addresses liability, not personal jurisdiction, and is based on labor-specific policy concerns; it has no relevance to personal jurisdiction.

2. Respondents are left to rely (at 31-38) on lower-court decisions for their nebulous "enterprise" theory. But there is universally a "conspicuous lack of support" for any "'integrated enterprise' theory" of personal jurisdiction. *United Elec., Radio & Mach. Workers of Am. v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1096 (1st Cir. 1992); *see Langlois v. Deja Vu, Inc.*, 984 F. Supp. 1327, 1338-39 (W.D. Wash. 1997) (a "novel theory" with potentially "absurd[] . . . result[s]"); *Hart Holding Co. v. Drexel Burnham Lambert Inc.*, No. 11514, 1992 WL 127567, at *10 (Del. Ch. May 28, 1992) ("so-called enterprise theory" "has not met with wide or easy acceptance").

This is likely because the theory freely merges the contacts of separate entities regardless of each defendant's role, and thereby eliminates the requirements that a defendant's contacts be "purposeful," *Burger King*, 471 U.S. at 475, and that each defendant be "assessed individually," *Keeton*, 465 U.S. at 781 n.13. And it eviscerates a defendant's ability to "structure [its] primary conduct" to obtain predictability over where it may be subject to suit. *World-Wide Volkswagen*, 444 U.S. at 297; *see* Lynn M. LoPucki, *The Death of Liability*, 106 Yale L.J. 1, 67-69 (1996) (describing enterprise theory as "radical" and not "workable" due to "intolerable uncertainty").[5]

[5] Professors Brilmayer and Paisley—whom Respondents depict as supportive (at 31, 59)—in fact criticize this approach as "radical." Lea Brilmayer & Kathleen Paisley, *Personal Jurisdiction and Substantive Legal Relations. Corporations, Conspiracies, and Agency*, 74 Cal. L. Rev. 1, 29-30 (1986).

Respondents rely primarily (at 32-34) on the doctrine's fleeting embrace by intermediate courts in Texas—notwithstanding that those decisions have been definitively rejected by the Texas Supreme Court. *See SSP Partners v. Gladstrong Invs. Corp.*, 275 S.W.3d 444, 454-55 (Tex. 2008) (no court "has found sound jurisprudential footing for the [enterprise] theory"). Respondents obliquely recognize this rejection (at 33 n.17), but claim that it affected only substantive liability, not personal jurisdiction. This is true, however, only in that by the time of *SSP Partners* the Texas Supreme Court had *already* rejected the doctrine for personal-jurisdiction purposes, citing *Cannon* and requiring analysis using traditional veil-piercing factors. *PHC-Minden*, 235 S.W.3d at 173-76; *see Olympia Capital Assocs., L.P. v. Jackson*, 247 S.W.3d 399, 412 (Tex. App. 2008) (rejecting theory for personal jurisdiction "[i]n light of *PHC-Minden*").

Respondents' attempt (at 34) to enlist support from other jurisdictions is equally unavailing, as they are reduced to describing as "similar" cases that apply far more demanding traditional doctrines, such as alter ego. *See, e.g., Donatelli v. Nat'l Hockey League*, 893 F.2d 459, 465 (1st Cir. 1990) (alter ego); *D'Jamoos v. Pilatus Aircraft Ltd.*, 566 F.3d 94, 108-09 (3d Cir. 2009) (principal-agent); *Judson Atkinson Candies, Inc. v. Latini-Hohberger Dhimantec*, 529 F.3d 371, 378-79 (7th Cir. 2008) ("dummy or sham" corporations). Notably, North Carolina itself applies such a traditional standard, requiring a showing of "complete domination" that renders the entity at issue a "mere instrumentality or alter ego." *State ex rel. Cooper v. Ridgeway Brands Mfg., LLC*, 666

S.E.2d 107, 114 (N.C. 2008) (internal quotation marks omitted). The paucity of Respondents' evidence is even more glaring as applied to these traditional doctrines.

3. Respondents' argument is also problematic in that they seek to attribute the conduct of the allegedly controlling entity (Goodyear TRC) to the allegedly controlled Petitioners. Whereas it is sometimes permissible to attribute to a controlling actor the actions of one he controls, *see Burger King*, 471 U.S. at 479 n.22, there is no logical basis for doing the reverse. *See, e.g., Home-Stake Prod. Co. v. Talon Petroleum, C.A.*, 907 F.2d 1012, 1021 (10th Cir. 1990) (refusing to "impute to the dominated corporation the forum contacts of its alter ego"); *Fields v. Sedgwick Associated Risks, Ltd.*, 796 F.2d 299, 301-02 (9th Cir. 1986) ("[A] parent corporation's ties to a forum do not create personal jurisdiction over the subsidiary.").

4. Lastly, Respondents' "enterprise" theory is particularly troubling for general jurisdiction. Subjecting a corporation to suit in a forum merely because of the *unrelated* contacts of its *affiliate* "stretches the boundaries of jurisdictional theory beyond any discernable limit." Lonny Sheinkopf Hoffman, *The Case Against Vicarious Jurisdiction*, 152 U. Pa. L. Rev. 1023, 1092-93 (2004). Indeed, the few cases cited by Respondents that support an enterprise theory are specific-jurisdiction cases. *See Bulova Watch Co. v. K. Hattori & Co.*, 508 F. Supp. 1322, 1344-45 (E.D.N.Y. 1981); *Warren v. Honda Motor Co.*, 669 F. Supp. 365, 370-71 (D. Utah 1987); *Hoffman v. United Telecomms., Inc.*, 575 F. Supp. 1463, 1476 (D. Kan. 1983).

IV. RESPONDENTS' POLICY ARGUMENTS, TO THE EXTENT RELEVANT, ARE MISTAKEN.

Respondents downplay (at 54) the likely negative effects on trade and foreign relations of a decision in their favor, arguing that a preliminary international "expert" report suggested that veil-piercing rules be left to individual states. But this evades the point, which has nothing to do with veil piercing: our Nation's trading partners *have* objected to overbroad assertions of general jurisdiction (U.S. Br. 33-34), and the expansive rule at issue here—allowing mere sales to suffice—"exceeds what many nations would recognize as reasonable" (*id.* at 30).

Respondents additionally argue (at 55-56) that deterring imports may not "be a bad thing," given the "U.S. trade deficit." But a decision in their favor would deter exports, too, because the risk of retaliatory exercises of jurisdiction by other countries threatens to "dissuade[]" American corporations "from exporting [their] products." U.S. Br. 31. And deterring imports *also* harms United States residents, who benefit from competition and variety. *Id.*

Respondents further misleadingly contend that the decision below will have little effect because general jurisdiction is rarely exercised, and "is, as [a] practical matter, '[s]eldom properly available against a defendant from abroad.'" Resps.' Br. 55-56 (quoting Kevin Clermont, *Jurisdictional Salvation and the Hague Treaty*, 85 Cornell L. Rev. 89, 115 (1999)). That is true only because (as shown *supra*) the courts have adhered to a demanding standard that—as Professor Clermont explains, in language Respondents omitted—"requires the defendant to be

so active in the forum as to seem like a native." 85 Cornell L. Rev. at 115. The decision below, by contrast, opens the floodgates to general jurisdiction.

Relatedly, Respondents assert (at 56) that the decision will be limited by "the pervasive presence of Goodyear in North Carolina," but this is a red herring. Respondents' contention (at 40-43) that Petitioners have "continuous and systematic" contacts with North Carolina is based *solely* on Petitioners' alleged responsibility for the distribution of their tires there. Respondents make no claim that any of Goodyear TRC's other contacts contribute to satisfying that test.

Lastly, Respondents predict (at 52) that reversal will create incentives to "outsource," so as to give "foreign courts the exclusive right to decide whether those subsidiaries are liable in tort for . . . defective products they produce." But Respondents ignore the availability of *specific* jurisdiction, which defeats any such incentive. And this case involves no "outsourcing." With "rare exceptions," Petitioners manufacture tires only for *overseas* markets. JA 229. Manufacturing products where they are sold and used is not "outsourcing" in any coherent sense.

CONCLUSION

The judgment of the North Carolina Court of Appeals should be reversed.

Respectfully submitted,

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AMICUS CURIAE BRIEF

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GOODYEAR LUXEMBOURG TIRES, S.A., ET AL.,
PETITIONERS

v.

EDGAR D. BROWN AND PAMELA BROWN,
CO-ADMINISTRATORS OF THE ESTATE OF
JULIAN DAVID BROWN, ET AL.

ON WRIT OF CERTIORARI
TO THE NORTH CAROLINA COURT OF APPEALS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment permits a state court to exercise personal jurisdiction over a foreign corporation in a cause of action not arising out of, or related to, the corporation's contacts with the State, on the grounds that goods produced by the corporation entered the State via the stream of commerce, and that the corporation's parent company does business in the State.

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In the Supreme Court of the United States

No. 10-76

GOODYEAR LUXEMBOURG TIRES, S.A., ET AL.,
PETITIONERS

v.

EDGAR D. BROWN AND PAMELA BROWN,
CO-ADMINISTRATORS OF THE ESTATE OF
JULIAN DAVID BROWN, ET AL.

ON WRIT OF CERTIORARI
TO THE NORTH CAROLINA COURT OF APPEALS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

INTEREST OF THE UNITED STATES

This case concerns the limits that the Due Process Clause of the Fourteenth Amendment places on a state court's exercise of "general" personal jurisdiction over a foreign corporation in a cause of action not arising out of or related to the corporation's contacts with the State. With respect to certain questions of personal jurisdiction, the interests of the United States are served by permitting suits against foreign entities to go forward in domestic courts. But as the United States explained in its brief as amicus curiae in *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408 (1984), decisions in this field can also "have a significant impact on the for-

eign trade relations of the United States." U.S. Br. at 1, *Helicopteros*, *supra* (No. 82-1127).

The state appellate court's reasoning and result here potentially threaten the United States' foreign trade and diplomatic interests. Acceptance of that reasoning and result could dissuade foreign corporations from sending their products into the United States, just as a United States corporation concerned about facing a similar rule abroad might be equally dissuaded from exporting its products. Such impediments to the free flow of international commerce could harm the domestic economy by reducing overall United States exports, and could deprive United States consumers of the full benefits of foreign trade. Foreign governments' objections to state courts' broad assertions of personal jurisdiction over non-United States corporations have also been a significant obstacle to the conclusion of international agreements on reciprocal recognition and enforcement of judgments—agreements that serve the United States' interest in a fair, predictable, and stable system for the resolution of disputes that cross national boundaries.

STATEMENT

1. "The Due Process Clause of the Fourteenth Amendment limits the power of a state court to exert personal jurisdiction over a nonresident defendant." *Asahi Metal Indus. Co.* v. *Superior Court*, 480 U.S. 102, 108 (1987) (opinion of O'Connor, J.). This limitation on state authority "protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 471-472 (1985) (quoting *International Shoe Co.* v. *Washington*, 326 U.S. 310, 319 (1945)). It also

"gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980). As a general matter, due process requirements are satisfied if "a nonresident corporate defendant * * * has 'certain minimum contacts with [the forum] such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."'" *Helicopteros Nacionales de Colombia, S.A.*, v. *Hall*, 466 U.S. 408, 414 (1984) (brackets in original) (quoting *International Shoe*, 326 U.S. at 316).

In delineating the types of contacts that may permit a forum to exercise personal jurisdiction over a defendant, this Court has distinguished between "specific jurisdiction" and "general jurisdiction." See *Helicopteros*, 466 U.S. at 414 & nn.8-9; see also *Calder* v. *Jones*, 465 U.S. 783, 786-787 (1984). Specific jurisdiction is the exercise of "personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum." *Helicopteros*, 466 U.S. at 414 n.8. By contrast, a State's assertion of general jurisdiction over a defendant potentially subjects the defendant to a broader range of suits because general jurisdiction extends to cases "not arising out of or related to the defendant's contacts with the forum." *Id.* at 414 n.9; see generally 4 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1067.5, at 499 n.5 (3d ed. 2003) (Wright & Miller).

This Court has specified different prerequisites for the exercise of specific and general jurisdiction. The determination whether a state court may exercise specific jurisdiction in a particular case turns on the "rela-

tionship among the defendant, the forum, and the litigation." *Helicopteros*, 466 U.S. at 414 (quoting *Shaffer* v. *Heitner*, 433 U.S. 186, 204 (1977)). Thus, a forum may assert specific jurisdiction over a defendant "if the defendant has 'purposefully directed' his activities at residents of the forum, and the litigation results from alleged injuries that 'arise out of or relate to' those activities." *Burger King*, 471 U.S. at 472-473 (quoting *Keeton* v. *Hustler Mag., Inc.*, 465 U.S. 770, 774 (1984), and *Helicopteros*, 466 U.S. at 414). That test is ordinarily satisfied if a corporation "'delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State' and those products subsequently injure forum consumers." *Id.* at 473 (quoting *World-Wide Volkswagen*, 444 U.S. at 298).

Establishing general jurisdiction is in one respect easier, and in another respect more difficult, than establishing specific jurisdiction. To establish general jurisdiction, the plaintiff need not demonstrate any link between the forum State and the events that gave rise to the suit.[1] For purposes of general jurisdiction, however, it is not sufficient that the defendant directed its goods into the stream of commerce with the expectation that they would be purchased in the forum State. Rather, a defendant can be subjected to general jurisdiction only in a State with which it has "the kind of continuous and

[1] Some Members of this Court have suggested that this approach to general jurisdiction is limited to corporate defendants. See *Burnham* v. *Superior Court*, 495 U.S. 604, 610 n.1 (1990) (opinion of Scalia, J.). All of the petitioners in this case are organized as corporations. See Pet. iii.

systematic general business contacts" that satisfy due process concerns. *Helicopteros*, 466 U.S. at 416.[2]

2. Petitioners are tire manufacturers incorporated in Luxembourg, Turkey, and France. Pet. App. 2a. They are indirect subsidiaries of The Goodyear Tire and Rubber Company (Goodyear U.S.A.), an Ohio corporation. Pet. iii.[3] Respondents are the administrators of the estates of Matthew Helms and Julian Brown, residents of North Carolina who were killed in a 2004 bus accident near Paris, France. Pet. App. 2a.

Respondents sued petitioners, Goodyear U.S.A., and others in the Superior Court of Onslow County, North Carolina. Respondents alleged—and, at least for purposes of analyzing personal jurisdiction, the state courts found—that the accident was caused by the failure of one of the bus's tires; that the tire at issue was a Goodyear Regional tire manufactured by petitioner Goodyear Lastikleri T.A.S.; and that such tires were designed and distributed by all of the petitioners. Pet. App. 30a-32a. Respondents sought relief on a number of theories, including that petitioners had negligently designed, con-

[2] This Court has also recognized certain other bases for a State's assertion of personal jurisdiction, such as the express or implied consent of the defendant, see *Burger King*, 471 U.S. at 472 n.14; *Insurance Corp. of Ir.* v. *Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703-705 (1982); *National Equip Rental, Ltd.* v. *Szukhent*, 375 U.S. 311, 314-316 (1964), and personal service on a defendant while he is temporarily within the State's territorial jurisdiction (sometimes referred to as "tag" jurisdiction), *Burnham*, *supra*. This case does not implicate those other bases of personal jurisdiction.

[3] The trial court stated that petitioner Goodyear Lastikleri T.A.S. was a wholly owned subsidiary of Goodyear U.S.A.; the court stated that petitioners Goodyear Luxembourg Tires, SA, and Goodyear Dunlop Tires France, SA, were also subsidiaries of Goodyear U.S.A., but it did not detail the extent of ownership. Pet. App. 34a.

structed, tested, and inspected the failed tire, and that they had failed to warn about latent defects in the tire. *Id.* at 2a-3a.

Petitioners moved to dismiss the complaint, arguing that the North Carolina trial court could not exercise personal jurisdiction over them consistent with the Due Process Clause of the Fourteenth Amendment.[4] Pet. App. 3a. The trial court denied the motions to dismiss. *Id.* at 30a-36a. The court identified three aspects of petitioners' activities as relevant to the jurisdictional inquiry.

First, the trial court found that the "subject tire contained information that was written entirely in English, including warnings and directions, U.S. Department of Transportation [DOT] markings placed on the tire to allow it to be sold in the United States, and markings to show it was manufactured as qualified for sale in the United States." Pet. App. 32a. The court inferred from those markings that petitioners had "deliberately attempted to take advantage of the tire market in North Carolina." *Id.* at 34a. Second, the trial court found that between 2004 and 2007, at least 46,231 tires manufactured by petitioners "were shipped into North Carolina for sale," albeit through Goodyear U.S.A. and affiliated companies rather than "by the original manufacturer." *Id.* at 32a-33a. Third, the court found that "[petitioners] are subsidiaries of Goodyear [U.S.A.], and as such have additional, abundant ties to the United States." *Id.* at 34a.

[4] North Carolina's long arm statute, N.C. Gen. Stat. § 1-75.4(1)(d) (2007), authorizes the State's courts to exercise personal jurisdiction to the full extent permitted by the Constitution. Pet. App. 11a (citing *Dillon* v. *Numismatic Funding Corp.*, 231 S.E.2d 629, 630 (N.C. 1977)).

The trial court concluded that petitioners "knew or should have known that some of [their] tires were distributed for sale to North Carolina residents," and that petitioners therefore "could reasonably anticipate being haled into court in North Carolina." Pet. App. 33a-34a. The court further concluded that the "quantity" and "quality" of petitioners' contacts with North Carolina "weigh[ed] in favor of a finding of general jurisdiction." *Id.* at 34a-35a. The court also found that North Carolina had a "substantial interest in allowing its citizens a forum for the redress of grievances," while petitioners would not be inconvenienced by litigating in North Carolina. *Id.* at 35a. The court concluded that petitioners had "continuous and systematic ties" to, and "substantial" activities in, North Carolina, such that the "[e]xercise of general jurisdiction over [petitioners] comports with Due Process and does not offend traditional notions of fair play and justice." *Id.* at 35a-36a.

3. The North Carolina Court of Appeals affirmed. Pet. App. 1a-29a. The court acknowledged that the case "is not related to, nor did it arise from, [petitioners'] contacts with North Carolina," and that the case therefore "involves general rather than specific jurisdiction." *Id.* at 12a-13a. It therefore framed the question before it as whether petitioners' "'activities in the forum are sufficiently continuous and systematic'" to "justify[] the exercise of general personal jurisdiction over [petitioners]." *Id.* at 13a (quoting *Skinner* v. *Preferred Credit*, 638 S.E.2d 203, 210 (N.C. 1977)).

In analyzing that question, the North Carolina Court of Appeals stated that the existence of "continuous and systematic contacts" with the forum turned on whether petitioners had "engage[d] in acts by which they purposefully avail[ed] themselves of the privilege of con-

ducting activities within the forum State." Pet. App. 13a (quoting *Lulla* v. *Effective Minds, LLC*, 646 S.E.2d 129, 133 (N.C. Ct. App. 2007)). Quoting this Court's decision in *World-Wide Volkswagen*, 444 U.S. at 298, the court explained that "'purposeful availment' has been found where a corporation 'delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.'" Pet. App. 14a. The state court concluded that, under its precedents, the pertinent inquiry was whether petitioners had "purposefully injected [their] product into the stream of commerce without any indication that [they] desired to limit the area of distribution of [their] product so as to exclude North Carolina." *Id.* at 20a (quoting *Bush* v. *BASF Wyandotte Corp.*, 306 S.E.2d 562, 568 (N.C. Ct. App. 1983)) (brackets in original).

In applying that standard, the North Carolina Court of Appeals found three of the trial court's factual findings to be significant. First, the appellate court viewed the DOT markings on the tire as an indication "that the tire in question was manufactured in such a manner that it could * * * be sold in the United States." Pet. App. 25a. Second, the court found "that tires manufactured by [petitioners] were shipped to the United States for sale and that there was no attempt to keep these tires from reaching the North Carolina market." *Ibid.*[5]

[5] Although the trial court found that petitioners had "caus[ed]" tires to be shipped into North Carolina, Pet. App. 34a-35a, the appellate court concluded that petitioners "were not directly responsible for the presence in North Carolina of tires that they had manufactured," *id.* at 22a-23a. Rather, the appellate court explained, "the available evidence tends to show that other entities were responsible for the shipment of tires manufactured by [petitioners] to the United States and, as a part of that process, the tires arrived in North Carolina." *Id.* at 22a.

Third, the appellate court understood "the distribution chain through which tires manufactured by [petitioners] were shipped into the United States" to be "'a continuous and systematic' process rather than a sporadic or episodic one," implemented "through a regular process employed within the Goodyear organization." *Id.* at 26a.[6]

Based on those findings, the appellate court concluded that petitioners had "purposefully and intentionally manufactured tires and placed them into the stream of interstate commerce without any limitation on the extent to which those tires could be sold in North Carolina." Pet. App. 27a. As for the fairness of exercising personal jurisdiction over petitioners, the appellate court adverted to North Carolina's "well-recognized interest in providing a forum in which its citizens are able to seek redress for injuries that they have sustained." *Ibid.* The court further explained that "a greater burden would be imposed upon [respondents] in the event that they were required to litigate their claims in France compared to the burden that would be imposed upon [petitioners] in the event that they are required to defend [respondents'] claims in the [North Carolina courts]." *Id.* at 27a-28a.

The state appellate court acknowledged petitioners' contention that "'stream of commerce' analysis simply does not apply in instances involving general, as com-

[6] Unlike the trial court, the appellate court did not regard the subsidiary/parent relationship between petitioners and Goodyear U.S.A. as relevant to its analysis of petitioners' contacts with North Carolina. The appellate court did, however, anticipate that petitioners' burden of litigating in North Carolina would be "alleviated to some extent by the fact that [petitioners] have corporate affiliates in the United States with business interests in North Carolina." Pet. App. 27a.

pared to specific jurisdiction." Pet. App. 28a. The court rejected the argument because petitioners "ha[d] not cited a North Carolina case to this effect," and because it "believe[d] that the real issue is the extent to which [petitioner's] products were, in fact, distributed in North Carolina markets." *Ibid.*

4. Petitioners sought review in the Supreme Court of North Carolina. That court found no "substantial constitutional question" warranting mandatory review, and it declined to exercise discretionary review. Pet. App. 37a-38a.

SUMMARY OF ARGUMENT

The North Carolina Court of Appeals fundamentally erred in determining whether petitioners were subject to *general* jurisdiction in North Carolina by using a truncated version of this Court's test for the permissible exercise of *specific* jurisdiction. The state courts' reasoning and result potentially threaten the United States' foreign trade and diplomatic interests. The judgment of the North Carolina Court of Appeals should be reversed.

A. The North Carolina courts cannot properly exercise specific jurisdiction in this case because respondents' suit does not "arise[] out of or relate[] to [petitioners'] contacts with [North Carolina]." *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414 n.8 (1984). Nothing about the bus accident or the tire at issue relates to petitioners' contacts with North Carolina. And neither North Carolina's interest in providing a forum for the suit, nor the fact that other tires unrelated to the accident have entered North Carolina, provides a legally sufficient basis for the exercise of specific jurisdiction here.

B. A State may assert general personal jurisdiction over a defendant consistent with the Due Process Clause of the Fourteenth Amendment when "the foreign corporation, through its [agent] 'ha[s] been carrying on in [the forum State] a continuous and systematic * * * part of its general business.'" *Helicopteros*, 466 U.S. at 415 (quoting *Perkins* v. *Benguet Consol. Mining Co.*, 342 U.S. 437, 438 (1952)). The North Carolina Court of Appeals held that defendants establish "continuous and systematic contacts" with a forum when they "engage in acts by which they purposefully avail themselves of the privilege of conducting activities within the forum State." Pet. App. 13a (citation omitted). That was error. This Court has consistently used the latter standard only when evaluating a State's exercise of specific jurisdiction, while the "continuous and systematic" contacts test has long been associated with a State court's exercise of general jurisdiction. The distinction between the two tests is essential because the concept of specific jurisdiction would serve no practical purpose if the test for personal jurisdiction in *all* suits against a defendant (general jurisdiction) were the same as the test in suits based on forum-directed conduct (specific jurisdiction).

Under the "continuous and systematic" contacts test, North Carolina's courts may not permissibly exercise general jurisdiction over petitioners. Petitioners appear to have established no physical presence in North Carolina, and the facts on which the state courts relied do not amount to "continuous and systematic" contacts. The distribution of petitioners' goods into North Carolina was not petitioners' own undertaking; the DOT markings on the tire are not themselves contacts with the State; and petitioners' status as subsidiaries of a United States corporation reveals little about their contacts

with North Carolina. Even taken together, those facts merely reflect petitioners' participation in the ordinary channels of interstate and foreign commerce; they are not systematic corporate activity of the kind this Court has found to support a State's exercise of general jurisdiction.

C. The United States has certain interests that favor relatively broad exercises of personal jurisdiction over foreign defendants. Some of those interests are protected through States' reasonable exercises of specific jurisdiction. Others are uniquely federal and are therefore not implicated by this case, which presents a question about the limitations the Due Process Clause of the Fourteenth Amendment places on a *state* court's exercise of personal jurisdiction.

By contrast, a State's excessive assertion of general jurisdiction potentially threatens particular harm to the United States' foreign trade and diplomatic interests. Decisions like the one at issue here may dissuade foreign companies from doing business in the United States, thereby depriving United States consumers of the full benefits of foreign trade. Conversely, a United States corporation concerned about facing a similar rule abroad might be equally dissuaded from exporting its products. In the diplomatic sphere, state courts' exercises of general jurisdiction have been a source of friction, and have proven to be a particular obstacle to the conclusion of beneficial international agreements on the reciprocal recognition and enforcement of judgments.

ARGUMENT

THE NORTH CAROLINA COURTS LACK PERSONAL JURISDICTION OVER PETITIONERS IN THIS SUIT

The gravamen of respondents' suit is that an allegedly defective tire manufactured in Turkey caused a fatal bus accident in France, and they contend that suit should be heard by a North Carolina state court. The North Carolina Court of Appeals held that the State's courts could hear the suit because petitioners had purposefully availed themselves of commercial opportunities in the State by placing tires into the stream of commerce with the understanding that some would be sold in North Carolina. That analysis might have provided a sufficient basis for subjecting petitioners to the state courts' *specific* jurisdiction had a tire sold in North Carolina caused the accident. To establish *general* jurisdiction over a suit that is unrelated to any of petitioners' forum-related activities, however, respondents were required to demonstrate much more substantial overall contacts between petitioners and the State. Because respondents failed to make that showing, the judgment of the North Carolina Court of Appeals should be reversed.

A. The North Carolina Courts May Not Exercise Specific Personal Jurisdiction Over Petitioners On The Claims In This Suit

The exercise of specific jurisdiction is reserved for suits "arising out of or related to the defendant's contacts with the forum." *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414 n.8 (1984); see *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 472-473 & n.15 (1985). This suit does not arise out of or relate to petitioners' contacts with North Carolina because all of

petitioners' alleged acts and omissions in connection with the deaths of respondents' decedents occurred outside that State. The bus accident occurred in France, and the allegedly defective tire was manufactured in Turkey. See Pet. App. 2a. And there is no suggestion in the state courts' opinions that the particular tire involved in the accident was designed in, or distributed through, North Carolina.

None of the factors identified by the state courts as bases for entertaining the suit is relevant to that specific-jurisdiction inquiry. The state appellate court suggested that the exercise of jurisdiction was supported by North Carolina's "well-recognized interest in providing a forum in which its citizens are able to seek redress for injuries that they have sustained." Pet. App. 27a. But the fact that *respondents'* decedents were North Carolina residents does not link the suit to any of *petitioners'* contacts with the forum. See *Helicopteros*, 466 U.S. at 414 (explaining that the specific-jurisdiction inquiry focuses on the "relationship among the defendant, the forum, and the litigation") (quoting *Shaffer* v. *Heitner*, 433 U.S. 186, 204 (1977)); *Keeton* v. *Hustler Mag., Inc.*, 465 U.S. 770, 780 (1984) (noting that the plaintiff's State of residence may be relevant, but only insofar as it "enhance[s] defendant's contact with the forum" or is "the focus of the activities of the defendant out of which the suit arises"); *Rush* v. *Savchuk*, 444 U.S. 320, 329, 332 (1980) (plaintiffs' contacts with forum cannot be decisive in assessing defendant's due process rights); cf. *Burger King*, 471 U.S. at 475 ("Jurisdiction is proper * * * where the contacts proximately result from actions by the defendant *himself* that create a substantial connection with the forum.") (internal quotation marks and citation omitted).

Similarly misplaced was the trial court's view (Pet. App. 35a) that this case is "closely related" to petitioners' contacts with North Carolina because it involves a tire designed or manufactured by petitioners, and other tires designed or manufactured by petitioners have been sold in North Carolina. This Court has suggested that to support specific jurisdiction, a contact must be "the subject matter of the case" or "related to the operative facts of the * * * action." *Rush*, 444 U.S. at 329. The entry of other tires into the State is neither; it played no role in causing respondents' injury, and it is irrelevant to respondents' claim on the merits. The relationship the trial court perceived is too tenuous to "give[] a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980).

This Court's decision in *Keeton* provides an instructive contrast. In *Keeton*, the Court upheld the application of New Hampshire's long-arm statute to a suit in which the plaintiff alleged that she had been libeled in a nationally circulated publication, 10,000-15,000 copies of which had been sold each month in that State. 465 U.S. at 772-774. The Court noted that, under the "single publication rule," the plaintiff sought to recover in a single proceeding for all the harms she had suffered nationwide. *Id.* at 774, 777. The Court emphasized, however, that the plaintiff "was suing, at least in part, for damages suffered in New Hampshire," *id.* at 776; that "New Hampshire has a significant interest in redressing injuries that actually occur within the State," *ibid.*; and that "[t]he tort of libel is generally held to occur wherever the offending material is circulated," *id.* at 777. Here,

by contrast, respondents do not allege that any tire sold in North Carolina was defective or contributed to their injury. Neither *Keeton* nor any other decision of this Court suggests that a defendant can be subjected to specific jurisdiction simply because it sold within the forum State goods of the same general character as those alleged to have caused injury elsewhere.

B. The North Carolina Courts May Not Exercise General Personal Jurisdiction Over Petitioners

The state appellate court erred by importing into its general-jurisdiction analysis tests this Court has enunciated in the specific-jurisdiction context. The proper inquiry in this context is whether "the foreign corporation, through its [agent] 'ha[s] been carrying on in [North Carolina] a continuous and systematic * * * part of its general business.'" *Helicopteros*, 466 U.S. at 415 (quoting *Perkins* v. *Benguet Consol. Mining Co.*, 342 U.S. 437, 438 (1952)). That test is not satisfied here because petitioners did not engage in "continuous and systematic" activities in North Carolina as the Court has used that phrase.

1. Evidence that petitioners "purposefully availed" themselves of commercial opportunities in North Carolina would not establish the "continuous and systematic contacts" necessary for the state courts to exercise general personal jurisdiction

The state appellate court began its general-jurisdiction analysis by correctly stating that the question before it was whether petitioners' "activities in the forum are sufficiently continuous and systematic." Pet. App. 13a (quoting *Skinner* v. *Preferred Credit*, 638 S.E.2d 203, 210 (N.C. 1977)). The court erred, however, by suggesting (*ibid.*) that the requisite "continuous

and systematic" contacts could be established merely through proof that petitioners had "purposely availed" themselves of commercial opportunities in North Carolina.

a. This Court's decisions exclusively associate concepts of "purposeful availment" and "stream of commerce" (see Pet. App. 14a) with specific jurisdiction. See *Republic of Argentina* v. *Weltover, Inc.*, 504 U.S. 607, 609-610, 619-620 (1992) (case arising from default on sovereign debt payable in forum State); *Asahi Metal Indus. Co.* v. *Superior Court*, 480 U.S. 102, 105-106 (1987) (case arising from injury suffered in the forum State allegedly caused by defective tire tube valve assembly manufactured by defendant); *Burger King*, 471 U.S. at 472-473 & n.15 (associating "purposefully directed" standard with specific jurisdiction); *Keeton*, 465 U.S. at 774, 780 (emphasizing that "the cause of action arises out of the very activity being conducted, in part, in [the forum State]"); *World-Wide Volkswagen*, 444 U.S. at 288, 297 (case arising from injury suffered in forum State while using product sold by defendant); *Kulko* v. *Superior Court*, 436 U.S. 84, 86, 94 (1978) (case concerning obligation of nonresident parent to support child resident in the forum State); *Shaffer*, 433 U.S. at 213-216 (applying "purposefully avail" standard to derivative suit against directors of a Delaware corporation only after assuming *arguendo* that Delaware always has an interest in cases concerning the management of the corporations it charters); *Hanson* v. *Denckla*, 357 U.S. 235, 238, 253 (1958) (case arising from dispute over inclusion of certain trust assets in an estate distributed pursuant to a will admitted to probate in the forum State).

By contrast, the "continuous and systematic" contacts test has long been associated with a State court's exercise of general jurisdiction. See *Helicopteros*, 466 U.S. at 409-410, 415-416 (case brought in Texas arising from helicopter crash in Peru); *Perkins*, 342 U.S. at 438-439, 445-448 (case brought in Ohio by aggrieved stockholder in Philippines corporation); see also *Ruhrgas AG* v. *Marathon Oil Co.*, 526 U.S. 574, 581 n.4 (1999) (noting district court's application of "systematic and continuous contacts" test to evaluate whether defendant was "subject * * * to general jurisdiction in [the forum State]") (citation omitted); *Burnham* v. *Superior Court*, 495 U.S. 604, 610 n.1 (1990) (opinion of Scalia, J.) (associating "'continuous and systematic' contacts" test with "jurisdiction with respect to matters unrelated to activity in the forum") (quoting *Perkins*, 342 U.S. at 438). Use of the more demanding "continuous and systematic" contacts standard for general jurisdiction reflects the common-sense insight that more extensive connections between a defendant and the forum State are needed to potentially subject the defendant to suit there for *all* its activities than to potentially subject it to suit for conduct directed at the forum.[7]

[7] The courts of appeals widely recognize that the exercise of general jurisdiction requires more substantial overall contacts between the defendant and the forum State than does the exercise of specific jurisdiction. See, *e.g.*, *Metropolitan Life Ins. Co.* v. *Robertson-Ceco Corp.*, 84 F.3d 560, 568 (2d Cir.) ("Because general jurisdiction is not related to the events giving rise to the suit, courts impose a more stringent minimum contacts test."), cert. denied, 519 U.S. 1006, and 519 U.S. 1007 (1996); *ESAB Group, Inc.* v. *Centricut, Inc.*, 126 F.3d 617, 623 (4th Cir. 1997) ("[T]he threshold level of minimum contacts to confer general jurisdiction is significantly higher than for specific jurisdiction."), cert. denied, 523 U.S. 1048 (1998); *Purdue Research Found.* v. *Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 787 (7th Cir. 2003) ("[T]he constitu-

If "purposeful availment" of commercial opportunities within a State alone were sufficient to establish "continuous and systematic" contacts with the forum, the entire concept of specific jurisdiction would be rendered superfluous. The core rationale for specific jurisdiction is that, even if a defendant's activities directed at a particular State are insufficient to potentially subject it to suit there for all its conduct worldwide, the defendant may reasonably expect to be sued in the State for any harms resulting from those activities. See *Keeton*, 465 U.S. at 779-780 (explaining that, although the defendant's "activities in [New Hampshire] may not be so substantial as to support jurisdiction over a cause of action unrelated to those activities," its business activities in that State were "sufficient to support jurisdiction when the cause of action arises out of the very activity being conducted, in part, in New Hampshire"). Specific jurisdiction would serve no practical purpose if the test for personal jurisdiction in *all* suits against a defendant were the same as the test in suits based on forum-directed conduct.

The state appellate court thus erred by invoking the "purposeful availment" standard designed for specific-jurisdiction cases to resolve the general-jurisdiction question presented here. As this Court explained in *Burger King*, the Due Process Clause's "fair warning requirement is satisfied if the defendant has purposefully directed his activities at residents of the forum, *and the litigation results from alleged injuries that arise out of or relate to those activities*." 471 U.S. at 472 (emphasis added; citations and internal quotation

tional requirement for general jurisdiction is considerably more stringent than that required for specific jurisdiction.") (internal quotation marks and citation omitted).

marks omitted). Use of a "purposeful availment" test in this context reads the italicized language out of the standard and would obviate any need to consider (as this Court has repeatedly considered) the "relationship among the defendant, the forum, *and the litigation*." *Shaffer*, 433 U.S. at 204 (emphasis added).

The practical consequences of such an approach are far-reaching. If mere "purposeful availment" of commercial opportunities in a particular State were sufficient to subject an enterprise to the general jurisdiction of that State's courts, a corporation that sold its goods to an independent distributor, intending that they be resold in all 50 States, could potentially be brought to judgment in any State, on any claim against it, regardless of where in the world the claim arose. Such a result would be incompatible with "our traditional conception of fair play and substantial justice." *International Shoe Co.* v. *Washington*, 326 U.S. 310, 320 (1945). In addition, by attaching disproportionate jurisdictional consequences to limited commercial undertakings directed at a particular State, that regime would create significant disincentives to geographic diversification of business. See pp. 30-31, *infra*.

b. The constitutional criteria governing a state court's exercise of general jurisdiction are set forth in this Court's decisions in *Perkins* and *Helicopteros*. The defendant in *Perkins*, a Philippines mining company, had stopped its physical operations when the islands were invaded by Japan. 342 U.S. at 448. The company's president relocated to Ohio, where he continued to carry on the company's business, such as it was, from an office in that State. *Id.* at 447-448. Within that office, the president "kept * * * office files of the company," "carried on * * * correspondence relating to the busi-

ness of the company," and "drew and distributed salary checks on behalf of the company." *Id.* at 448. The corporation employed two secretaries in Ohio, maintained "two active bank accounts carrying substantial balances," and used an Ohio bank to "act[] as transfer agent for [its] stock." *Ibid.* The president hosted "[s]everal directors' meetings * * * at his home or office" in Ohio, "supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines," and "dispatched funds to cover purchases of machinery for such rehabilitation." *Ibid.* This Court concluded that, through those activities, the president had "carried on in Ohio a continuous and systematic supervision of the necessarily limited wartime activities of the company." *Id.* at 438. That course of conduct meant the Fourteenth Amendment did not prevent the Ohio courts from exercising personal jurisdiction over the company, even in a suit that "did not arise in Ohio and d[id] not relate to the corporation's activities there." *Id.* at 438, 448.

In *Helicopteros*, by contrast, this Court held that the Texas courts could not exercise general jurisdiction over a Colombian helicopter transportation company (Helicol) in a suit arising from a fatal helicopter crash in Peru. 466 U.S. at 418-419. The decedents' employer, a Texas-based joint venture, had contracted with Helicol in Peru to provide transportation in Peru. *Id.* at 410-411. As summarized by the Court:

> Helicol's contacts with Texas consisted of sending its chief executive officer to Houston for a contract-negotiation session; accepting into its New York bank account checks drawn on a Houston bank; purchasing helicopters, equipment, and training service from [a Texas helicopter manufacturer] for substan-

> tial sums; and sending personnel to [the manufacturer's] facilities in Fort Worth for training.

Id. at 416.

This Court concluded that those contacts with the forum State did not "constitute the kind of continuous and systematic general business contacts * * * found to exist in *Perkins*." *Helicopteros*, 466 U.S. at 416. The Court explained that the single visit to Texas by the chief executive "cannot be described or regarded as a contact of 'continuous and systematic' nature." *Ibid.* The Court viewed Helicol's receipt of checks drawn on a Texas bank as a factor "of negligible significance" because there was "no indication that Helicol ever requested that the checks be drawn on a Texas bank." *Ibid.*; see *id.* at 417 ("Such unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction."). And Helicol's purchases of goods and training from the Texas helicopter manufacturer were found not to establish general jurisdiction because "purchases and related trips, standing alone, are not a sufficient basis for a State's assertion of jurisdiction." *Ibid.* (discussing *Rosenberg Bros.* v. *Curtis Brown Co.*, 260 U.S. 516 (1923)).

Taken together, *Perkins* and *Helicopteros* establish that the relevant inquiry is whether "the foreign corporation, through its [agent] 'ha[s] been carrying on in [the forum State] a continuous and systematic * * * part of its general business,'" typified by the Ohio activities of the foreign corporation in *Perkins*. *Helicopteros*, 466 U.S. at 415 (quoting *Perkins*, 342 U.S. at 438). That test is demanding. In particular:

- "Carrying on" connotes active undertaking by the defendant, rather than results worked by third parties. Thus, in *Helicopteros*, the payments to the defendant drawn on a Texas bank were irrelevant because "unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts." 466 U.S. at 417.
- "Continuous" refers to a practice "[o]perated without interruption." *Webster's New International Dictionary* 577 (2d ed. 1958) (*Webster's Second*). Thus, the "one trip to Houston by Helicol's chief executive officer" could not "be described or regarded as a contact of a 'continuous and systematic' nature." *Helicopteros*, 466 U.S. at 416.
- "Systematic" refers to conduct "that forms a system," which is an "aggregation * * * of objects united by some form of regular action or interdependence." *Webster's Second* 2562. Thus, in *Perkins*, the determinative factor was not the magnitude of the defendant's activities within Ohio; the corporation had only three agents in that State (its president and two secretaries), and its mining "operations [had been] completely halted." 342 U.S. at 447-448. Rather, what mattered was that the corporation's contacts with Ohio—banking, employment, recordkeeping, holding office space, conducting corporate affairs, etc., see *ibid.*—together formed the very embodiment of the defendant's corporate control structure.

These limitations are appropriate because in combination they afford the "degree of predictability to the

legal system," *World-Wide Volkswagen*, 444 U.S. at 297, that potential defendants need in organizing their affairs. The need for such predictability is particularly acute when the result of specified contacts with a forum is that a defendant may potentially be sued in that forum for *all* of its conduct worldwide.

2. The state courts' decisions in this case identify no basis on which North Carolina courts may exercise general personal jurisdiction over petitioners

Under the standard enunciated in *Helicopteros* and *Perkins*, none of the petitioners has "carr[ied] on in [North Carolina] a continuous and systematic * * * part of its general business.'" *Helicopteros*, 466 U.S. at 415 (quoting *Perkins*, 342 U.S. at 438). The Fourteenth Amendment therefore precludes the courts of that State from exercising general personal jurisdiction over petitioners.

Unlike the defendant corporation in *Perkins*, petitioners do not appear to have established any physical presence within the forum State. The state courts' opinions do not suggest that petitioners' employees or other agents have ever been stationed in North Carolina or that petitioners have owned real or personal property there. Rather, taken together, the opinions of the state trial and appellate courts identify three potential bases for the exercise of personal jurisdiction.

First, the state appellate court noted that some of petitioners' products "eventually found their way into North Carolina markets through the operation of a continuous and highly organized distribution process." Pet. App. 27a; see *id.* at 25a-26a. Second, the appellate court observed that the tire involved in the accident bore markings that would have permitted its sale in the

United States. See *id.* at 25a. Third, the state trial court emphasized that petitioners are subsidiaries of Goodyear U.S.A., which does business in North Carolina. See *id.* at 34a. None of those factors, either singly or in combination, provides a constitutionally sufficient basis for the North Carolina courts' exercise of general jurisdiction in this case.

The fact that goods manufactured by petitioners made their way via the stream of commerce into North Carolina cannot justify the state courts' exercise of general jurisdiction. As the state appellate court explained, petitioners "were not directly responsible for the presence in North Carolina of tires that they had manufactured." Pet. App. 22a-23a. Rather, "the available evidence tends to show that other entities were responsible for the shipment of tires manufactured by [petitioners] to the United States and, as a part of that process, the tires arrived in North Carolina." *Id.* at 22a. At least in the general-jurisdiction context, the "unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction." *Helicopteros*, 466 U.S. at 417.[8]

[8] This case therefore does not present the question whether, or under what circumstances, a defendant's own sales directly into a forum would permit the forum State to exercise general jurisdiction over the defendant. Compare *Johnston* v. *Multidata Sys. Int'l Corp.*, 523 F.3d 602, 612 (5th Cir. 2008) ("[N]either Multidata's sale of approximately $140,000 worth of goods in a five-year time period to Texas customers nor its employees' occasional travels to Texas to service equipment or attend trade conventions are sufficient to justify exercising general jurisdiction."), with *Gator.Com Corp.* v. *L.L. Bean, Inc.*, 341 F.3d 1072, 1078 (9th Cir. 2003) (finding general jurisdiction "in light of L.L. Bean's extensive marketing and sales in California, its extensive contacts with California vendors, and * * * its website[,] * * * structured to

And while the state appellate court attached significance to the "substantial number of tires manufactured by [petitioners]" that were ultimately sold in North Carolina, that number (approximately 45,000 in the years 2004-2007) was a tiny fraction of the more than 90 million tires that petitioners manufactured during that period. Compare Pet. App. 26a with Pet. 4.

The markings on the tire at issue also do not permit the state courts to exercise personal jurisdiction. Such markings may have some probative force in determining, under a specific-jurisdiction analysis, whether the defendant knowingly or intentionally directed its product toward the forum State. But see pp. 31-33, *infra* (noting recognition of DOT standards by other countries). But they are not properly regarded as an independent "contact" with the forum State.

The bare fact that petitioners are the subsidiaries of a United States corporation, Goodyear U.S.A., is likewise irrelevant to the general-jurisdiction analysis. In *Keeton*—which was argued in tandem with *Helicopteros*—this Court admonished that "[e]ach defendant's contacts with the forum State must be assessed individually," and it specifically cautioned that "jurisdiction over a parent corporation [does not] automatically establish jurisdiction over a wholly owned subsidiary." 465 U.S. 781 n.13.[9] The trial court failed to respect that principle

operate as a sophisticated virtual store in California"), dismissed as moot, 398 F.3d 1125 (9th Cir. 2005) (en banc).

[9] In some cases, a different analysis may be warranted by the case-specific interactions between particular affiliated corporations, as when a subsidiary acts as the agent or alter ego of the parent corporation, or vice-versa. See *Donatelli* v. *National Hockey League*, 893 F.2d 459, 465-466 (1st Cir. 1990) ("In those cases where personal jurisdiction over the parent has been found to exist, there is invariably a 'plus' factor—

by relying on the bare existence of the corporate relationship. See Pet. App. 34a. The appellate court committed a similar error in focusing on the "regular process employed within the Goodyear organization" (*id.* at 26a), effectively treating the parent and subsidiary corporations as an undifferentiated entity for distribution of petitioners' products.

Finally, even if all the facts found by the state courts were relevant to the due process analysis, they would not together establish the "systematic" contacts necessary to permit the state courts to exercise general jurisdiction over petitioners. Unlike the prototypically systematic contacts in *Perkins*—which, taken together, were the very essence of the defendant corporation's control structure, such as it was—petitioners' contacts here merely reflect their participation in the ordinary channels of interstate and foreign commerce. Those

something beyond the subsidiary's mere presence within the bosom of the corporate family."); 4 Wright & Miller § 1069.4, at 174 ("[I]f the subsidiary is merely an agent through which the parent company conducts business in a particular jurisdiction or its separate corporate status is formal only and without any semblance of individual identity, then the subsidiary's business will be viewed as that of the parent and the latter will be said to be doing business in the jurisdiction through the subsidiary for purposes of asserting personal jurisdiction."); Gary B. Born & David Westin, *International Civil Litigation in United States Courts Commentary and Materials* 144 (2d ed. 1992) ("Some courts have considered whether jurisdiction over a U.S. parent company also permits a U.S. court to exercise jurisdiction over foreign subsidiaries of the parent. Lower courts have generally applied the same sort of alter ego analysis that governs the reverse situation."); cf. *United States* v. *Scophony Corp. of Am.*, 333 U.S. 795, 813-816 (1948) (holding that a foreign parent corporation was "found" in the United States due to its "constant supervision and intervention" in the activities of its United States subsidiaries going well "beyond normal exercise of shareholders' rights").

contacts do not reflect a system of corporate activity in North Carolina any more than they reflect such a system anywhere else in the world that petitioners' products may be found. The Due Process Clause of the Fourteenth Amendment does not permit North Carolina to exercise general personal jurisdiction over petitioners on so scant a basis.

C. A State Court's Exercise Of General Jurisdiction Over Non-United States Corporations In Circumstances Like Those Presented Here Would Undermine The United States' Foreign Trade And Foreign Affairs Interests

1. With respect to certain questions of personal jurisdiction that are largely not presented here, the interests of the United States are served by permitting suits against foreign entities to go forward in domestic courts. For example, United States residents benefit from the availability of convenient domestic fora to obtain redress for injuries caused by foreign entities. That interest, however, is often vindicated by reasonable exercises of specific jurisdiction, without resort to general jurisdiction.

The United States also has an interest in ensuring that claims under federal law, brought in courts of the United States, are not unduly constrained by a minimum contacts analysis that is narrowly focused on a particular State instead of the Nation as a whole. See Fed. R. Civ. P. 4(k)(2); Fed. R. Civ. P. 4(k) advisory committee's note (1993) (Amendment). Such interests are not directly implicated by this Court's interpretation of the Due Process Clause of the Fourteenth Amendment, however, because that constitutional provision applies only to the conduct of *state* governments and officials. In prior cases, this Court has appropriately reserved the

question whether "a federal court could exercise personal jurisdiction, consistent with the Fifth Amendment, based on an aggregation of the defendant's contacts with the Nation as a whole, rather than on its contacts with the State in which the federal court sits." *Omni Capital Int'l, Ltd.* v. *Rudolf Wolff & Co.*, 484 U.S. 97, 102 n.5 (1987); see *Asahi*, 480 U.S. at 113 n.* (opinion of O'Connor, J.).

2. The state courts' assertions of general jurisdiction over petitioners here present quite different considerations, particularly with regard to the United States' foreign trade and foreign relations interests. If broadly construed and adopted by other States, the North Carolina courts' reasoning in this case would significantly increase the exposure of non-United States businesses to lawsuits not arising out of or related to those businesses' contacts with the forum State. At the extreme, state courts could entertain a broad range of litigation wholly unconnected to the United States.

Although the plaintiffs in this case are North Carolina residents, and the North Carolina Court of Appeals noted the State's "interest in providing a forum in which its citizens are able to seek redress" (Pet. App. 27a), the residence of the plaintiffs is irrelevant to a proper general-jurisdiction analysis (see p. 14, *supra*), and the state appellate court did not suggest that this factor was essential to its holding. If this suit had been brought instead by a French citizen injured in the bus accident, the state appellate court might have ordered the case dismissed based on generalized fairness concerns (see Pet. App. 26a-28a), or perhaps on forum non conveniens principles. Nothing in the "purposeful availment" standard would require that result, however, and the possibility that some suits might be dismissed on more amor-

phous rationales would provide little predictability to non-United States businesses seeking to ascertain the jurisdictional consequences that particular commercial activities would entail.

The North Carolina courts' exercise of jurisdiction here exceeds what many nations would recognize as reasonable. For example, the Restatement (Third) of the Foreign Relations Law of the United States (1986) (Restatement) identifies as "reasonable" certain "exercise[s] of jurisdiction to adjudicate." Restatement § 421(2), at 305. When the defendant is an artificial entity, an exercise of general jurisdiction is reasonable under the Restatement view if the "juridical person[] is organized pursuant to the law of the state" or "regularly carries on business in the state." *Id.* § 421(2)(e) and (h) at 305-306; see *id.* § 421 reporter's note 3, at 310 (discussing general and specific jurisdiction).[10] By contrast, the *Restatement* recognizes only specific jurisdiction as reasonable if "the person, whether natural or juridical, had carried on outside the state an activity having a substantial, direct, and foreseeable effect within the state." *Id.* § 421(2)(j) at 306. Insofar as other nations apply similar jurisdictional principles, they might object to the state courts' exercise of general jurisdiction in this case.

With respect to both imports and exports, the repercussions of such objections could be particularly damaging to the United States' foreign trade relations. The state court's decision creates an obvious disincentive for foreign manufacturers to allow their goods to be distrib-

[10] In the Restatement, the term "state" refers to nations, as distinguished from the several States. See Restatement § 201. The Restatement does not address "allocation of jurisdiction among domestic courts within a state for example, between national and local courts in a federal system." *Id.* § 421 cmt. f at 307.

uted in the United States. Any resulting diminution in import traffic would harm United States residents, who would otherwise benefit from a broader range of available goods. If the situation were reversed, a United States corporation concerned about potentially having to answer abroad for its conduct anywhere in the world might be dissuaded from exporting its products. Any resulting diminution of export traffic would be especially undesirable in light of the importance of increased exports to the Nation's long-term economic health. See, *e.g.*, Exec. Order No. 13,534, § 1, 75 Fed. Reg. 12,433 (2010) ("A critical component of stimulating economic growth in the United States is ensuring that U.S. businesses can actively participate in international markets by increasing their exports of goods, services, and agricultural products. Improved export performance will, in turn, create good high-paying jobs.").

The state courts' identification of the DOT-approved markings on the tire at issue as a factor supporting jurisdiction could pose an additional threat to United States interests. The United States has sought to encourage its trading partners to accept United States standards-related measures—which include United States technical measures and results of United States testing and inspection processes known formally as "conformity assessment procedures"—as sufficient to meet their own requirements. For example, the United States seeks to negotiate agreements providing for other governments to accept as equivalent United States standards-related measures for certain goods. See U.S. Trade Rep., *2010 Report on Technical Barriers to Trade*

28-30.[11] Indeed, several of the United States' trade agreements recognize the benefits of encouraging equivalence.[12]

More specifically, in determining whether particular motor vehicle parts, including tires, can permissibly be imported, a number of countries treat compliance with DOT standards, including through use of DOT markings, as evidence that the products are safely manufactured.[13] The adoption of United States standards-related measures by our trading partners lowers trade barriers for United States manufacturers wishing to export their products, since those manufacturers are often already compliant with those standards-related measures. Decisions like the state courts' rulings here,

[11] This report is available at http://www.ustr.gov/sites/default/files/REPORT%20ON%20TECHNICAL%20BARRIERS%20TO%20TRADE%20FINAL%20PRINTER%2025Mar09.pdf.

[12] See, *e.g.*, Agreement on Technical Barriers to Trade, Art. 2.7, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Legal Instruments—Results of the Uruguay Round, H. Doc. No. 316, 103d Cong., 2d Sess. 1427, 1429 (1994), 1868 U.N.T.S. 120, 122 ("Members [of the World Trade Organization] shall give positive consideration to accepting as equivalent technical regulations of other Members * * * provided they are satisfied that these regulations adequately fulfill the objectives of their own regulations."); Dominican Republic-Central America-United States Free Trade Agreement, Ch. 7, Aug. 5, 2004, http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta/final-text.

[13] See, *e.g.*, WTO Comm. on Technical Barriers to Trade (WTO-TBT), Notification, G/TBT/N/ISR/460 (Oct. 25, 2010) (Israel's adoption of United States Federal Motor Vehicle Safety Standard (FMVSS) No. 116); WTO-TBT, Notification, G/TBT/N/MYS/7 (Feb. 5, 2007) (Malaysia's adoption of FMVSS Nos. 109 and 119); WTO-TBT, Notification, G/TBT/N/CAN/186 (Dec. 13, 2006) (Canada's adoption of FMVSS Nos. 110 and 120).

however, could reduce the willingness of foreign manufacturers to certify their products as complying with standards and procedures in use in the United States, out of fear that such markings could subject them to general jurisdiction in state courts in the United States. That reluctance could in turn deter other countries from adopting United States standards-related measures, thereby potentially creating barriers to the export of goods manufactured in the United States.

Finally, foreign governments' objections to our state courts' expansive views of general personal jurisdiction have in the past impeded negotiations of international agreements on the reciprocal recognition and enforcement of judgments. See, *e.g.*, Friedrich K. Juenger, *The American Law of General Jurisdiction*, 2001 U. Chi. Legal F. 141, 161-162 ("[T]he broad sweep of American general jurisdiction became problematic when this country began to negotiate with other nations for an international judgments recognition convention under the auspices of the Hague Conference on Private International Law.").[14] The conclusion of such international compacts

[14] One commentator traced the prominent and contentious role that United States assertions of general jurisdiction played in the Hague Conference: "Most delegations focused on jurisdictional rules they believed went too far, were 'exorbitant,' and thus should be placed on the prohibited list of Article 18(e). * * * [G]eneral doing business jurisdiction w[as] quickly voted onto that list." Ronald A. Brand, *The 1999 Hague Preliminary Draft Convention Text on Jurisdiction and Judgments: A View from the United States*, *in The Hague Preliminary Draft Convention on Jurisdiction and Judgments* 12 (Fausto Pocar & Costanza Honorati, eds., 2005). Indeed,

> [t]he most debated issue of allocation of jurisdiction was what to do with "doing business" jurisdiction in U.S. law. Brussels States, in particular, wanted it clearly ensconced on the prohibited list of Article 18(2), and that happened in the Preliminary Draft Convention

is an important foreign policy objective of the United States because such agreements serve the United States' interest in providing its residents a fair, predictable, and stable system for the resolution of disputes that cross national boundaries. Reversal of the state court's judgment, in accordance with this Court's precedents, would thus serve the diplomatic interests of the United States.

> Text with the language of Article 18(2) lit. *e*, which prohibits jurisdiction based solely on "the carrying on of commercial or other activities by the defendant in [the forum State], except where the dispute is directly related to those activities." This would have placed U.S. general doing business jurisdiction on the prohibited list in all circumstances, something the U.S. delegation had almost no hope of selling to the U.S. Senate upon efforts for ratification if the Preliminary Draft Convention Text had been adopted by the Hague Conference.

Id. at 8-9.

CONCLUSION

The judgment of the North Carolina Court of Appeals should be reversed.

Respectfully submitted.

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AMICUS CURIAE BRIEF

No. 10-76

IN THE

Supreme Court of the United States

GOODYEAR LUXEMBOURG TIRES, S.A., *et al.*,
Petitioners,

v.

EDGAR D. BROWN, *et al.*,
Respondents.

On Writ of Certiorari to the North Carolina Court of Appeals

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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IN THE

Supreme Court of the United States

No. 10-76

GOODYEAR LUXEMBOURG TIRES, S.A., *et al.*,
Petitioners,

v.

EDGAR D. BROWN, *et al.*,
Respondents.

On Writ of Certiorari to the North Carolina Court of Appeals

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

INTEREST OF *AMICUS CURIAE* [1]

The Chamber of Commerce of the United States of America is the world's largest federation of businesses and associations. The Chamber represents three hundred thousand direct members and indirectly

[1] No counsel for a party authored this brief in whole or in part. Neither a party, nor its counsel nor any other entity other than *amicus curiae* has made a monetary contribution intended to fund the preparation or submission of this brief. Both parties have consented to the filing of this brief.

represents an underlying membership of more than three million U.S. businesses and professional organizations of every size and in every sector and geographic region of the country. An important function of the Chamber is to represent the interests of its members in matters before the courts, Congress and the Executive Branch. To that end, the Chamber regularly files *amicus curiae* briefs in cases of vital concern to the nation's business community.

As explained in the Chamber's brief *amicus curiae* supporting the petition for a writ of *certiorari*, the decision below raises just such vital concerns for the nation's business community. Its assertion of personal jurisdiction has an immediate impact for the Chamber's members whose products happen to be distributed in North Carolina. More broadly, the lower court's sweeping assertion of general jurisdiction based simply on the volume of products distributed in a forum state—irrespective of whether those products bear any relationship to the underlying cause of action—sets a dangerous precedent for the scope of a court's personal jurisdiction over a nonresident corporation that has profound implications for the Chamber's members both here and abroad. The Chamber is uniquely positioned to explain those broader implications and to offer a perspective on how this Court can correct the lower court's distortion of the settled constitutional limits on state courts' assertions of personal jurisdiction.

SUMMARY OF THE ARGUMENT

The Due Process Clause does not support the exercise of general jurisdiction based upon a defendant's act of placing products into the stream of commerce. Because the lower court failed to apply this bedrock principle of constitutional jurisprudence, this Court

should reverse its judgment. In addition to the reasons given in Petitioners' brief, which *amicus* fully supports, three additional ones justify this outcome.

First, placing goods into the stream of commerce does not resemble the sorts of activities that traditionally have justified the exercise of general jurisdiction. This Court's precedents reveal five main categories of general jurisdiction—citizenship, locus of incorporation, consent, transient service and continuous and systematic supervision of corporate activities (sometimes known as the "doing business" test). These categories reflect the traditional understanding that a state may exercise general jurisdiction either based on certain status relationships between the defendant and the forum state (such as citizenship) or based on the defendant's voluntary appearance in the forum state (such as transient service). The act of placing goods in the stream of commerce neither creates a status relationship between the defendant and the forum state nor does it establish the defendant's voluntary presence there.

Second, the continuous and systematic supervision test should not be extended to authorize general jurisdiction based upon the act of placing goods in the stream of commerce. Though sometimes labeled the "doing business" test, that label is easily misunderstood. Commercial transactions with the forum state, even when occurring at regular intervals, do not standing alone justify the assertion of jurisdiction over claims unrelated to those transactions. Rather, to satisfy the "doing business" test, a defendant must have engaged in continuous and systematic operations and activities in the forum state such as those that occurred in *Perkins v.*

Benguet Consolidated Mining Co., 342 U.S. 437 (1952).

Third, general jurisdiction predicated on the act of placing goods into the stream of commerce has several deleterious effects on American foreign relations, American economic policy, and American business. Such an unbridled exercise of jurisdiction frustrates the United States' continued efforts to conclude bilateral and multilateral treaties on jurisdiction and judgments. Moreover, as recent experience in the antitrust field demonstrates, aggressive assertions of jurisdiction over foreign companies risk exposing American companies to retaliatory assertions of jurisdictions by foreign courts. By requiring companies affirmatively to block distribution of their goods in a particular state, the lower court's rule cripples interstate and foreign commerce. Finally, the decision below would herald an unprecedented era of forum shopping which would both undermine companies' ability to structure their commercial relationships and, over the long run, deter foreign direct investment in the United States.

ARGUMENT

I. THE DUE PROCESS CLAUSE DOES NOT SUPPORT THE EXERCISE OF GENERAL JURISDICTION BASED ON A DEFENDANT'S PLACING PRODUCTS INTO THE STREAM OF COMMERCE.

"The foundation of jurisdiction is physical power." *McDonald v. Mabee*, 243 U.S. 90, 91 (1917). In order to reduce the risks of conflicting assertions of power, whether between states of the Union or between a state and a foreign country, an essential feature of the Founder's constitutional design has been to set

limits on the exercise of state adjudicatory jurisdiction. For the first century following the Founding, the Full Faith and Credit Clause (and the accompanying federal statute) supplied the primary constraint. *See* U.S. Const. Art. IV, §1; 28 U.S.C. §1738. Despite the literal language of these enactments, a state was not obligated to recognize or enforce another state's judgment where the court rendering the judgment lacked jurisdiction. *See, e.g., D'Arcy v. Ketchum*, 52 U.S. 165, 176 (1851); *Lafayette Ins. Co. v. French*, 59 U.S. 404, 406 (1855).

Following its ratification, the Fourteenth Amendment introduced a second, independent constitutional limit on state exercise of judicial jurisdiction. Unlike the Full Faith and Credit Clause, the Due Process Clause did not require a post judgment enforcement proceeding before an assertion of personal jurisdiction triggered a constitutional question. Since the amendment's adoption, this Court has repeatedly stressed that this Clause constrains the exercise of judicial jurisdiction over non-resident defendants, including corporations. *See, e.g., International Shoe Co. v Washington*, 326 U.S. 310 (1945); *St. Clair v. Cox*, 106 U.S. 350, 353 (1882); *Pennoyer v. Neff*, 95 U.S. 714 (1878). While *Pennoyer* employed a territoriality principle to define these limits on state power, *see* Max Rheinstein, *The Constitutional Bases of Jurisdiction*, 22 U. Chi. L. Rev. 775, 792-93 (1955), *International Shoe* defined them in terms of the defendant's "contacts" with the forum state.

Since *International Shoe*, two distinct theories of judicial jurisdiction have emerged—specific jurisdiction (where the cause of action bears a sufficient relation to the defendant's contacts with the forum state) and general jurisdiction (where that relationship

is lacking). *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n. 9 (1984); Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1136 (1966). The lower court correctly acknowledged that "[t]he present dispute is not related to, nor did it arise from, [petitioners'] contacts with North Carolina." Appendix to Petition for a Writ of *Certiorari* ("Pet. App.") 12a. Thus, this case concerns the proper contours of general jurisdiction.

While the court below unquestionably held that general jurisdiction was proper in this case, the precise basis for that holding is not entirely clear. The Court began and ended its analysis with general jurisdiction principles but interspersed that analysis with a discussion of specific jurisdiction principles. Some language in the lower court's opinion suggests that it sought to build upon this Court's recent stream-of-commerce cases (all of which involved specific jurisdiction) to create a new category of general jurisdiction. *See, e.g.*, Pet. App. 28a (rejecting petitioners' argument that "'stream of commerce' analysis simply does not apply in instances involving general, as compared to specific, jurisdiction"). Subpart A of this brief refutes that possible holding. Elsewhere, the lower court's opinion suggests the court sought to fit this case within the "continuous and systematic" contacts theory of general jurisdiction based upon the volume of Petitioners' goods sold by distributors to North Carolina buyers. *See, e.g.*, Pet. App. 13a (referring to the "'continuous and systematic contacts' required for the assertion of general personal jurisdiction"). Subpart B of this brief refutes that possible holding. Finally, Subpart C explains how, regardless of the precise holding, the exercise of general jurisdiction based on the injection

of goods into the stream of commerce entails several deleterious consequences.

A. The Stream of Commerce Theory Does Not Fit Within the Traditional Categories That Have Supported the Exercise of Judicial Jurisdiction Over Claims Unrelated to the Defendant's Contacts.

From the earliest developments in the Fourteenth Amendment's limits on state power, this Court has carefully cabined the types of relationships and activities that will permit the exercise of jurisdiction over claims unrelated to the defendant's contacts with the forum state. *See generally* Gary B. Born & Peter B. Rutledge, *International Civil Litigation in the United States* 102-32 (4th ed. 2006); Restatement (Third) Foreign Relations of the United States §421(2) (a)-(h). Such limits are essential. Unlike in the case of specific jurisdiction, the relatedness requirement no longer serves as an independent constraint on the exercise of state power. Clearly recognizing the need for these limits, this Court has identified five categories of general jurisdiction.

First, a court may exercise general jurisdiction where the defendant is a citizen, national, domiciliary or resident of the forum state. *See* Restatement (Third) Foreign Relations of the United States §421(2)(b)-(d); *Milliken v. Meyer*, 311 U.S. 457 (1940); *Blackmer v. United States*, 284 U.S. 421 (1932). For example, in *Blackmer*, this Court upheld the issuance of a federal court subpoena to a United States citizen who was residing in France. The Court explained that "[b]y virtue of the obligations of citizenship, the United States retained its authority over [Blackmer],

and he was bound by its laws made applicable to him in a foreign country." 284 U.S. at 436.

Second, a court may exercise general jurisdiction where the defendant is organized pursuant to the laws of the forum state. *See* Restatement (Third) Foreign Relations of the United States §421(2); Restatement (Second) Conflict of Laws §41; *Pennoyer*, 95 U.S. at 735-36; *Bank of Augusta v. Earle*, 38 U.S. 519 (1839). For example, in *Earle* this Court explained that corporations were artificial persons created by state law. Relying on this principle, *Earle* took the view that corporations could *only* be sued in the state where they were incorporated. While post-*Earle* jurisprudence has relaxed this rule and permitted corporations to be sued elsewhere, *see St. Clair*, 106 U.S. at 354 59, the essential insight of the decision—that the state of incorporation enjoyed a jurisdictional prerogative that other states did not—remained unquestioned.

Third, a court may exercise general jurisdiction where the defendant has consented to the exercise of jurisdiction. *See* Restatement (Third) Foreign Relations of the United States §421(2)(g); *Pennoyer*, 95 U.S. at 733. For example, in *Pennoyer*, this Court explained that the exercise of personal jurisdiction would be appropriate if the non resident defendant has made a "voluntary appearance." 95 U.S. at 733. Consent as a basis for jurisdiction flows also from this Court's decisions holding that due process, as a personal right, can be waived. *See Insurance Co. of Ireland v. Compagnie des Bauxites*, 456 U.S. 694, 703 (1982); *D.H. Overmyer Co. v. Frick*, 405 U.S. 174 (1972).

Fourth, a court may exercise general jurisdiction where an individual defendant has been personally served with process while physically present in the

forum state. *See* Restatement (Third) Foreign Relations of the United States §421(2)(a); *Burnham v. Super. Ct.*, 495 U.S. 604 (1990); *Pennoyer*, 95 U.S. at 733. For example, *Pennoyer* made clear that the Due Process Clause would support the exercise of *in personam* jurisdiction where the defendant has been "brought within [the forum state's] jurisdiction by service of process within the State." 95 U.S. at 733. Likewise, in *Burnham*, this Court unanimously held that the Due Process Clause generally did not prohibit the exercise of personal jurisdiction based on personal service of a defendant who was physically present in the forum state. 495 U.S. at 619, 629, 640. While the members of the Court divided over the proper reasoning, a plurality of four justices observed that "[a]mong the most firmly established principles of personal jurisdiction in American tradition is that the courts of a State have jurisdiction over nonresidents who are physically present in the State." *Id.* at 610 (opinion of Scalia, J., joined by Rehnquist, C.J. and White and Kennedy, JJ.)

Fifth, a court may exercise general jurisdiction where the defendant has engaged in continuous and systematic supervision of the company's activities from within the forum state. *See* Restatement (Third) Foreign Relations Law §421(2)(h); *See Helicopteros*, 466 U.S. at 418; *Perkins*, 342 U.S. at 448. This category, discussed in greater detail in Subpart B, is sometimes described as the "doing business" theory of general jurisdiction. That label, however, can be easily misunderstood. Commercial transactions between the defendant and the forum state do not suffice to support the exercise of jurisdiction over claims *unrelated* to those transactions. *See, e.g.*, *Helicopteros*, 466 U.S. at 418. Instead, to satisfy this theory, the defendant must undertake in the forum

state the "continuous and systematic supervision" of the "activities of the company." *Perkins*, 342 U.S. at 448.

Two principles unify these categories of general jurisdiction. First, a limited number of "status" relationships between the defendant and the forum state will give rise to general jurisdiction. This principle explains the cases based on citizenship, the state of incorporation and the theory in *Perkins*. It reflects the state's power over individuals or businesses that derive legal protections from it. *See* von Mehren & Trautman, 79 Harv. L. Rev. at 1141-42 ("From the beginning in American practice, general adjudicatory jurisdiction over corporations . . . could be exercised by the community with which the legal person had its closest and most continuing legal and factual connections. The community that chartered the corporation and in which it had its head office occupies a position somewhat analogous to that of the community of a natural person's domicile and habitual residence."). Second, where the defendant is voluntarily present in the forum state, general jurisdiction will be proper. This principle explains the cases based on consent and personal service. It can be understood either as a voluntary acceptance of the state's power over the defendant or as a satisfactory assurance that a non-resident defendant has received the "fair warning that a particular activity may subject [it] to the jurisdiction of a foreign sovereign." *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring in judgment). *See generally St. Clair*, 106 U.S. at 353 ("The doctrine of [*Pennoyer*] applies in all its force to personal judgments of state courts against foreign corporations. The courts rendering them must have acquired jurisdiction over the party by personal service or

voluntary appearance, whether the party be a corporation or a natural person.").

The stream of commerce theory does not fit within either of the two principles unifying this Court's general jurisdiction jurisprudence. The stream-of-commerce theory rests on the idea that the defendant's act of placing goods within the stream of commerce can, under certain circumstances, satisfy the Due Process Clause's requirements for the exercise of *in personam* jurisdiction *See Asahi Metal Industry Co. Ltd. v. Super. Ct.*, 480 U.S. 102, 110-11 (1987) (plurality opinion); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98 (1980). The act of placing goods in the stream of commerce does not establish a legal "status" relationship between the defendant and the forum state. Nor does that act establish the defendant's voluntary presence in the forum state. Thus, because the stream of commerce theory involves neither of the principles that explain the exercise of *in personam* jurisdiction over claims unrelated to the defendant's contacts with the forum state, it cannot serve as a basis for general jurisdiction.

Of course, this position does not mean that a defendant's act of placing goods in the stream of commerce is irrelevant to the jurisdictional inquiry. Under certain circumstances, that act, coupled with additional conduct by the defendant directed at the forum state, could support the exercise of jurisdiction with respect to claims bearing the necessary relationship to the act. That theory, unlike the theory of general jurisdiction, requires a sufficient nexus between the contacts and claims and, thereby, supplies an extra layer of protection to the non-resident defendant. *Amicus* explores that topic in greater

detail in its brief for the companion case. *See* Brief of the Chamber of Commerce of the United States of America as *Amicus Curiae* in support of Petitioner, *J. McIntyre Machinery Ltd. v. Nicastro* (No. 09-1343). For purposes of this case, however, it is sufficient to hold that the act of placing goods in the stream of commerce does not support the exercise of judicial jurisdiction over claims unrelated to those contacts.

B. The Test Based Upon Continuous and Systematic Supervision of Corporate Activities Should Not Be Extended to Support General Jurisdiction Based Upon the Placement of Goods Into the Stream of Commerce.

As noted above, the lower court's opinion may also be read to hold that the volume of petitioners' products that reached North Carolina *via* a distribution network satisfied the test articulated in *Perkins*. So read, the opinion below does not create a new category of general jurisdiction so much as it expands an existing one. That expansion, however, misinterprets the *Perkins* test and is at odds with this Court's opinions.

Though *Perkins* articulated the idea of continuous and systematic supervision of corporate activities, the concept emerged from this Court's post-*Pennoyer* jurisprudence. In the decades following *Pennoyer*, the Court sought to apply the concepts of "consent" and "presence" to juridical entities like corporations. *See Burnham*, 495 U.S. at 610 n. 1 (plurality opinion); *see generally* Phillip B. Kurland, *The Supreme Court, the Due Process Clause and the* In Personam *Jurisdiction of State Courts*, 25 U. Chi. L. Rev. 569, 577-86 (1958) (tracing the development of the constitutional limits of judicial jurisdiction over non-

resident corporations during the era between *Pennoyer* and *International Shoe*). For example, in *People's Tobacco Co. v. American Tobacco Co.*, the Court described the inquiry as whether "the business [is] of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction and is by its duly authorized officers, present within the state . . . ." 246 U.S. 79, 87 (1918). Similarly, in *Green v. Chicago Burlington & Quincy Ry. Co.* the Court described the inquiry as "whether the corporation was *doing business* . . . in such a manner and to such an extent as to warrant the inference that, through its agents, it was *present* there." 205 U.S. 530, 532 (1907) (emphasis added).

During this era, the Court was careful not to equate commercial transactions in the forum state with "presence" even when those commercial transactions occurred "at regular intervals." *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516, 518 (1923). For example, in *Rosenberg*, the Court rejected the idea that regular purchases from the forum state were sufficient to support the exercise of personal jurisdiction over a non-resident corporation. *Id.* Similarly, in *Green*, the Court held that the solicitation of "considerable" business in the forum state by an agent of the non-resident corporation did not support the exercise of personal jurisdiction over the corporation. 205 U.S. at 533-34. *See also People's Tobacco*, 246 U.S. at 87 (collecting cases). In *Philadelphia & Reading Ry. Co. v. McKibbin*, the Court held that a railroad's sale of coupon tickets for use with connecting carriers in the forum state did not support the exercise of personal jurisdiction over the corporation. 243 U.S. 264, 268-69 (1917). Finally, consistent with the principle announced in the foregoing cases, the Court held in *Bank*

of America v. Whitney Central Nat'l Bank, that a Louisiana bank's maintenance of relationships with several correspondent banks in New York did not constitute "doing business" in New York even though the bank maintained a "large New York business" and its transactions with the correspondent banks were "varied, important, and extensive." 261 U.S. 171, 173 (1923). In several of these cases, the Court emphasized that the corporate defendant lacked offices, property, employees or other indicia of presence within the forum statute. *See Bank of America*, 261 U.S. at 173; *Rosenberg*, 260 U.S. at 518; *McKibbin*, 243 U.S. at 266-67.

To be sure, a few decisions in the post-*Pennoyer*, pre-*International Shoe* era could be read to suggest that a non-resident corporation was "doing business" in the forum state based on its sales there. *See Henry L Dougherty & Co. v. Goodman*, 294 U.S. 623 (1935); *International Harvester Co. v. Kentucky*, 234 U.S. 579 (1914). Yet the critical feature in those cases (lacking in this one) was that the defendant's sales in the forum state bore a direct relationship to the underlying suit. For example, in *International Harvester*, the underlying suit was a criminal action alleging violations of Kentucky's antitrust laws. That allegation rested upon the sales of defendant's goods into Kentucky. Likewise, *Goodman* concerned a state statute that authorized personal jurisdiction over a non-resident securities business "*growing out of or connected with* the business of that office or agency" 294 U.S. at 625 (emphasis added). *International Harvester* and its progeny did not hold (and had no reason to consider) the entirely independent question whether the "doing business" theory supported personal jurisdiction over the defendant with respect to

claims entirely unrelated to its activities in the forum.

Indeed, only a few years after *International Harvester*, the Court declared unambiguously that a state's ability to designate an agent for service of process over a non-resident corporation was limited to suits that "relate[ ] to business and transactions within the jurisdiction of the state enacting the law." *Simon v. Southern Ry. Co.*, 236 U.S. 115, 130 (1915). *See also Mitchell Furniture Co. v. Selden Breck Constr. Co.*, 257 U.S. 213, 215-16 (1921). Consistent with this principle, the Court in *Chapman Ltd. v. Thomas B. Jeffrey Co.* held that jurisdiction would not lie over a non-resident corporation that had appointed (but later removed) a registered agent for service of process where the cause of action did not arise "out of acts or transactions within the state." 251 U.S. 373, 378 (1920). Otherwise, "claims on contracts, wherever made, and suits for torts, wherever committed, might . . . be drawn to the jurisdiction of any state in which the foreign corporation might at any time be carrying on business" which would work a "manifest inconvenience and hardship" on the non-resident corporation. *Simon*, 236 U.S. at 130.

After *International Shoe* finally introduced the notion of "contacts," it did not discard these well established limits on the "doing business" test. *Shoe* was careful to cite several of these post-*Pennoyer* precedents. *See* 326 U.S. at 314-19. Later, the Court in *Helicopteros* relied on *Rosenberg*'s rule—that purchases from the forum state at regular intervals did not establish "presence"—to conclude that such activities also did not supply the necessary "continuous and systematic contacts." 466 U.S. at 418.

This Court's decision in *Perkins*, remains the only post-*International Shoe* decision of this Court upholding general jurisdiction based upon the non-resident defendant's continuous and systematic supervision of company activities from the forum state. *Perkins* involved a suit against a company organized under the laws of the Philippines. Following the Japanese invasion of that country, the company's president (who was also its general manager and principal stockholder) relocated to Ohio. From there, he maintained the company's files, held director's meetings, carried on correspondence on behalf of the company, drew and distributed salary checks, maintained several bank accounts, supervised the company's rehabilitation, and oversaw the purchase of machinery for the company's operations. 342 U.S. at 447-48. The Court found that this pattern of "continuous and systematic supervision of the necessarily limited wartime activities of the company" (which it characterized elsewhere as "continuous and systematic corporate activities," *id.* at 445) supported the exercise of jurisdiction over claims that were concededly not related to the company's contacts with Ohio. *Id.* at 448-49.

The Court revisited this theory in *Helicopteros*. *Helicopteros* involved a suit against a company organized under the laws of Colombia. Unlike the foreign corporation in *Perkins*, the defendant in *Helicopteros* had no property, offices or records in the forum state (Texas). Its contacts with the state consisted of purchasing helicopters and parts from a Texas-based company, sending prospective pilots to Texas for training and holding a negotiating session for a helicopter-services contract. Relying on *Rosenberg*, the Court held that the Colombian company lacked the contacts necessary to support

jurisdiction over claims that were, again, concededly unrelated to the company's contacts with Texas.

Perkins and *Helicopteros* thus demonstrate that the focus of this theory, as with the pre-*International Shoe* "doing business" test, depends on the quantity and types of corporate acts taking place in the forum state. *See also Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 779 n. 11 (1984) (canvassing the facts in *Perkins* and observing that "[i]n those circumstances, Ohio was the corporation's principal, if temporary, place of business so that Ohio jurisdiction was proper even over a cause of action unrelated to the activities in the State"). Where the corporate defendant has engaged in the exceptional sort of supervision and conduct of corporate activities from the forum state as occurred in *Perkins*, general jurisdiction may lie. By contrast, where such supervision and conduct is lacking, as was the case in *Helicopteros*, it will not. After *Shoe*, like before, the volume of commercial transactions taking place in the forum state does not satisfy this test.

C. Extending the Categories of General Jurisdiction to Include the Stream of Commerce Theory Would Have Deleterious Effects for American Businesses and the Foreign Commercial Relations of the United States.

Apart from its incompatibility with this Court's doctrine, several practical considerations also counsel against the rule adopted by the lower court. Here, *amicus* offers four—(1) the damage to federal government's ability to manage the foreign relations of the United States, (2) the risk of retaliation by foreign courts against United States companies, (3) the

chilling effect on commercial activity, and (4) the invitation to engage in blatant forum shopping.

1. The Decision Below Damages Efforts by the United States to Complete a Treaty on Jurisdiction and Judgments.

Decisions about the management of America's foreign affairs rest with the federal government. *See, e.g., Dep't of the Navy v. Egan*, 484 U.S. 518, 529 (1988); *Oetjen v. Cent. Leather Co.*, 246 U.S. 297, 302 (1918). Consequently the Supreme Court has frowned upon activities that interfere with this foreign affairs function. *See, e.g., American Ins. Ass'n v. Garamendi*, 539 U.S. 396 (2003); *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363 (2000). Just as state laws must "give way [where they] impair the effective exercise of the Nation's foreign policy," *Zschernig v. Miller*, 389 U.S. 429, 440 (1968), so too must assertions of judicial jurisdiction pursuant to those laws. The decision below has just such an impermissible effect on the "exercise of the Nation's foreign policy." Specifically, it hampers the ability of the United States Government to conclude a multilateral treaty on jurisdiction and judgment enforcement.

"The recognition and enforcement of judgments from one jurisdiction to another has long been understood as a fundamental requirement for fully integrated markets." Jeffrey D. Kovar, Assistant Legal Adviser, U.S. Dep't of State, Prepared Statement for Hearing Before the Subcomm. on Courts and Intellectual Property of the House Comm. on the Judiciary, 106th Cong., at 3 (July 29, 2000). Consequently, for decades, the United States has sought to conclude a

treaty on jurisdiction and judgment enforcement with its major trading partners. Such a treaty is not only in the interests of the United States Government, it is also in the interests of American businesses. Among other things, such a treaty holds forth the prospect of enhancing the currency of United States judgments and limiting exotic forms of foreign jurisdiction to which American businesses are sometimes subject. *See, e.g.*, *Yahoo!, Inc. v. La Ligue Contre le Racisme et L'Antisemitisme*, 433 F.3d 1199 (9th Cir. 2006) *(en banc)* (describing French court's assertion of jurisdiction against American internet service provider based on content contained on company's website).

Despite the importance of such a treaty to both the United States Government and the American business community, efforts to conclude one have proven unsuccessful to date. *See generally* Born & Rutledge, *International Civil Litigation in the United States* at 1011 12. A constant sticking point in these efforts has been the inability of the United States and its trading partners to achieve consensus on common principles governing judicial jurisdiction. The decision below, unless soundly rejected by this Court, threatens to complicate those efforts and to undermine this important diplomatic and economic objective.

Absent an international agreement, the courts of one country are under no particular obligation to recognize or to enforce the judgments of another country's court. *Hilton v. Guyot*, 159 U.S. 113 (1895). This stands in contrast to the "full faith and credit" that courts within the United States give to each other's judgments. Instead, when a judgment rendered by a court in the United States is taken abroad, the enforceability of that judgment often

turns on the eccentricities of foreign law, which can be especially dubious of United States judgments particularly when they are predicated on jurisdictional theories unfamiliar to the foreign court. *See* Samuel P. Baumgartner, *How Well Do U.S. Judgments Fare in Europe?*, 40 Geo. Wash. Int'l L. Rev. 173 (2008).

This skeptical treatment of United States judgments stands in stark contrast to the treatment that foreign countries afford each other's judgments. Over the course of the twentieth century, European nations concluded dozens of bilateral treaties providing for the recognition and enforcement of each other's judgments. *See* European Council Regulation 44/2001 ("Regulation 44/2001") Art. 69. Beginning in the 1960's, European nations undertook efforts to complete a multilateral treaty on the subject, which resulted in the Brussels Convention of 1968 and, later, the Lugano Convention of 1988. *See* Lugano Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, Sept. 16, 1988, O.J. (L 319); Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, Sept. 27, 1968, O.J. (L/299/32). These treaties have largely been subsumed within European Council Regulation 44/2001 on the Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. *See* Regulation 44/2001. That regulation sets forth uniform, harmonized provisions governing jurisdiction, including jurisdiction over non resident defendants (*see, e.g., id.* Art. 5). It also obligates member states to recognize and to enforce each other's judgments, subject to very narrow exceptions (*see id.* Arts. 34 35). Similarly, at least thirty treaties between China and other countries regarding the recognition

and enforcement of judgments are currently in force. *See* Graeme Johnston *et al.*, *China*, in Getting the Deal Through 43 (2007).

By contrast, the United States stands in relative diplomatic isolation with respect to the global architecture governing the harmonization of jurisdictional principles and the enforcement of foreign judgments. *See* American Law Institute, The Foreign Judgments Recognition and Enforcement Act § 7 cmt. b (May 2005). This has not been for a lack of effort. In the 1970's, the United States sought to conclude a bilateral agreement on the mutual recognition of judgments. *See* Peter North, *The Draft UK/US Judgments Convention: A British Viewpoint*, 1 Nw. J. Int'l L. & Bus. 219 (1979). After the parties initialed a preliminary draft, negotiations collapsed over, among other things, the United Kingdom's opposition to expansive principles of personal jurisdiction under United States law. *See* Born & Rutledge, *International Civil Litigation in the United States* at 1012 n. 50. More recently, under the auspices of the Hague Conference on Private International Law, the United States sought to conclude a multilateral treaty on jurisdiction and judgment enforcement. Those efforts also failed, and a key problem again was the chasm on matters of jurisdiction that separated the United States from other countries. Among other things, civil law countries objected to jurisdiction principles based on "doing business" as well as the vagueness and unpredictability of United States jurisdictional standards. *See id.* at 1001-02. Given these jurisdictional differences, countries were forced to settle for a more limited treaty (not yet ratified by the United States) that governed only cases where the parties had agreed upon a contractually specified forum. *See*

Hague Convention on Choice of Court Agreements, June 30, 2005, 44 I.L.M. 1294.

Manufacturing an entirely new theory of general jurisdiction based on the stream of commerce, as the lower court has done, would further complicate the efforts by the United States and its major trading partners to conclude the long sought after treaty on jurisdiction and judgments. Of course, the United States may have strong reasons—whether grounded in policy or bargaining position—to want to maintain some existing categories of judicial jurisdiction. But creating an entirely new one simply throws fuel on the fire and complicates the diplomatic efforts. Given that over half the states of the Union have linked the scope of their courts' judicial jurisdiction explicitly to the limits set by the Due Process Clause, *see* Petition for a Writ of *Certiorari* at 17, only this Court can ensure that the legal chasm separating the United States and its trading partners over principles of jurisdiction and judgment enforcement does not widen.

2. The Decision Below Invites Retaliation by Foreign Courts Against United States Companies.

Unless corrected, the lower court's decision signals an unprecedented expansion of principles of general jurisdiction under United States law. Not only would that expansion have profound implications for foreign companies whose goods reach the United States, it could also have equally profound implications for United States companies exporting abroad. History demonstrates that expansive assertions of jurisdiction over foreign companies by United States courts can easily trigger retaliatory action by foreign countries against United States companies.

Experience under United States antitrust law illustrates the risk. Following the development of the effects test for application of United States antitrust laws to foreign conduct, *see United States v. Alcoa*, 148 F.2d 416 (2d Cir. 1945), United States courts increasingly entertained private actions under United States antitrust laws against foreign companies. These assertions of legislative jurisdiction sparked significant protests from the United States' major trading partners. *See, e.g.*, Joseph P. Griffin, *Foreign Government Reactions to U.S. Assertions of Extraterritorial Jurisdiction*, 6 Geo. Mason L. Rev. 505 (1998). In their mildest form, these protests came through diplomatic statements. *See* James R. Atwood & Kingman Brewster, *Antitrust and American Business Abroad* §4.15 (2d ed. 1985). In a more extreme form of protest, countries adopted blocking statutes which barred the production of evidence for use in the United States proceedings. *See* Bate C. Toms, *The French Response to the Extraterritorial Application of United States Antitrust Laws*, 15 Int'l L. 585 (1981). In its most extreme form, some nations (including the United Kingdom) adopted clawback statutes entitling the foreign defendant to recover damages from the American antitrust plaintiff. *See* A.V. Lowe, *Blocking Extraterritorial Jurisdiction: The British Protection of Trading Interests Act of 1980*, 75 Am. J. Int'l L. 257 (1981). Most recently, European competition authorities have begun aggressively to apply competition principles to conduct taking place outside the European Union, including cases directed at American Companies. *See* Born & Rutledge, *International Civil Litigation in the United States* at 657-58.

While the experience under the antitrust laws technically involves assertions of legislative jurisdic-

tion, *see Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 813 (1993) (Scalia, J. dissenting, joined by O'Connor, Kennedy and Thomas, JJ.), expansive assertions of judicial jurisdiction by state courts can equally implicate "the procedural and substantive policies of other *nations* whose interests are affected . . . ." *Asahi*, 480 U.S. at 115 (plurality opinion); *see also Pacific Atlantic Trading Co. Inc. v. M/V Main Exp.*, 758 F.2d 1325, 1130 (9th Cir. 1985) (opinion of Judge Nelson joined by Judges Kennedy and Alarcon) ("[W]hen the nonresident defendant is from a foreign nation, rather than from another state in our federal system, the sovereignty barrier is higher . . .). Several European nations have enacted "retaliatory jurisdictional" laws. *See* Gary B. Born, *Reflections on Judicial Jurisdiction in International Cases*, 17 Ga. J. Int'l & Comp. L. 1, 15 (1987). *See also* Wendy Perdue, *Aliens, The Internet and 'Purposeful Availment:' A Reassessment of the Fifth Amendment's Limits on Personal Jurisdiction*, 98 Nw. U. L. Rev. 455, 464 (2004). Under these retaliatory laws, the courts of these countries may exercise jurisdiction over foreign persons "in circumstances where the courts of the foreigner's home state would have asserted jurisdiction." Born, 17 Ga. J. Comp & Int'l L. at 15. Applied to the rule announced by the lower court, these laws would allow foreign courts to assert jurisdiction over United States companies—and only United States companies—based on the volume of products distributed in the countries where those courts sit. (European law prohibits the application of such laws to citizens of other member countries, *see* Council Regulation 44/2001, art. 3(2) & Annex I.) The obvious effect would be to punish United States companies for an aggressive assertion of jurisdiction by a North Carolina court, just like the clawback

statutes punished United States plaintiffs for aggressive assertions of legislative jurisdiction under American antitrust laws. Moreover, because the lower court's opinion asserts jurisdiction over foreign companies for products unrelated to those giving rise to the suit, assertions of jurisdiction under such retaliatory laws would be virtually without boundary. It would be literally open season in foreign courts on United States companies. Such an outcome would thereby undermine the flow of goods by United States companies to foreign countries and undercut the commercial interests of this country. *See* Brief for the United States as *Amicus Curiae* in *Helicopteros v. Hall* No. 82-1127) at 6 (urging the Court to refuse to exercise jurisdiction over foreign company due to its deleterious effect on foreign trade that is of "critical importance . . . to our national economy").

Thus, in order to avoid the risks of retaliation to United States companies and the consequent undermining of United States' strong commercial interest in export promotion, the lower court's aggressive assertion of general jurisdiction based on the volume of products flowing into the forum state should be rejected.

3. The Decision Below Cripples Commercial Activity.

The federal government serves as the primary regulator of interstate and foreign commerce. *See* U.S. Const. Art. I, §8, cl. 3. Just as the interstate commerce and foreign commerce clauses ensure that state legislative enactments do not unduly encumber the flow of commerce, *see Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434, 449 (1979), so too does the Due Process Clause operate as an "instrument of interstate federalism" to ensure that state court

assertions of judicial jurisdiction do not have similarly commerce-crippling effects. Unfortunately, the decision below has precisely that undesirable effect.

According to the lower court, a company whose products are distributed into a forum state can only avoid the sweep of general jurisdiction by taking affirmative steps to *prevent* the distribution of its products into the forum state. Pet. App. 17a. For companies that cannot risk the potentially crippling costs of having to defend in a foreign forum, their only safe harbor is to cease distribution of goods altogether, even when those goods bear no relationship to the goods giving rise to a particular claim.

While the case before the Court involves foreign companies and has an immediate effect on foreign commerce, the decision has an equally profound impact on American businesses and, consequently, on interstate commerce. The impact is especially devastating for small businesses, which comprise a core component of the Chamber's membership. Such small businesses represent the vast majority of American businesses and make up a significant share the American economy. U.S. Small Business Administration, Office of Advocacy, The Small Business Economy: A Report to the President (2009). They supply a variety of goods, ranging from consumer goods to component parts used in a broader manufacturing process. These small businesses lack the necessary resources to finance a legal defense in a faraway forum, even another state in the United States. Yet the logic of the decision below suggests that they must be prepared to do so—or take affirmative steps to ensure that their products are not distributed (or incorporated into other goods

which are subsequently sold) in states where they are unprepared to finance a legal defense. Such a rule works an impermissible drag on interstate commerce and hampers the ability of the Due Process Clause to operate as an "instrument of interstate federalism."

4. The Decision Below Invites Blatant Forum Shopping.

It is worth recalling that this case involves an accident taking place in a foreign country where the alleged tortious act also occurred overseas. As the case involves both a French defendant and an accident taking place in France, French courts almost certainly would have jurisdiction over most, if not all, of the claims. *See* European Council Regulation 44/2001 Arts. 2(1), 5(3).

Yet the decision below invites plaintiffs to import these sorts of lawsuits into North Carolina (or other states) based on the volume of Petitioners' other products distributed there. Not only does this outcome force the Petitioners to defend themselves in a distant forum, *see Asahi*, 480 U.S. at 116 (plurality opinion), it has profound effects on the course of the suits themselves. For example, North Carolina procedural law, which differs markedly from French law on matter such as discovery, would apply. *Compare* N.C. R. Civ. P. 26-37 (North Carolina discovery rules), *with* Institute for the Advancement of the American Legal System, *A Summary of Comparative Approaches to Civil Procedure* at 22 (describing French approach to discovery). Likewise, North Carolina conflicts principles, which differ markedly from French principles, would determine the applicable substantive law. *Compare* Symeon Symeonides, *Choice of Law in American Courts in 2009: Twenty Third Annual Survey*, 58 Am. J. Comp. L. 227, 231 (2010)

(classifying North Carolina's conflicts rules on tort matters), *with* Symeon Symeonides, *Rome II and Torts Conflicts: A Missed Opportunity*, 56 Am. J. Comp. L. 173, 186-87 (2008) (discussing European conflicts principles governing torts cases).

Moreover, the forum shopping possibilities are not limited merely to North Carolina and France. For companies that have regional or nationwide sales networks, the flow of products into multiple states broadens the options for the plaintiffs' bar. They can seek out the forum offering the most desirable mix of substantive and procedural law for their case.

These forum shopping opportunities affect every potential commercial relationship for a company that crosses the lower court's undefined tripwire for general jurisdiction. Because general jurisdiction does not require any relationship between the contacts and the claims, the decision below means that a court may hear *any* claims against *any* defendant whose distribution of products to North Carolina crosses the general jurisdiction tripwire. Any commercial partner or tort claimant from around the world can, under the logic of the decision below, cherry pick from among several possible forums in deciding where to bring suit. Since states take a variety of different approaches on prudential doctrines such as *forum nonconveniens*, *see Kedy v. A.W. Chesterton Co.*, 946 A.2d 1171 (R.I. 2008) (surveying state approaches and noting that some states reject the doctrine altogether), the non-resident defendant has little opportunity to avoid the forum shopping traps created by the lower court's rule.

These enhanced opportunities for forum shopping threaten core principles of the Due Process Clause. Those core principles include "giv[ing] a degree of

predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Woodson*, 444 U.S. at 297. Such "[p]redictability is valuable to corporations making business and investment decisions." *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1193 (2010). Yet the decision below deprives companies of any predictability whatsoever. It creates huge ambiguities about what volume of goods distributed in the forum state will trigger the general jurisdiction theory. It does not explain whether the requisite volumes are measured in absolute terms or as a percentage of sales. The test leaves unanswered whether the volume measures vary across different industries, depending on whether the company manufactures mass-produced goods or a few specialized goods. The rule provides virtually no guidance on the relevant time period during which the volume sales should be measured. Consequently, a company seeking to structure its primary conduct in order to limit being haled into a faraway forum has practically no guidance on how to plan for those volume triggers.

Not only do these forum shopping effects harm businesses, they also discourage future foreign investment in the United States. As the Department of Commerce recently explained, foreign direct investment plays a vital role in the health of the United States economy and accounted for nearly 17 percent of U.S. GDP in 2004. United States Dep't of Commerce, The U.S. Litigation Environment and Foreign Direct Investment: Supporting U.S. Competitiveness by Reducing Legal Costs and Uncertainty ("Litigation Environment") at 2. Despite the importance of foreign direct investment to the United States economy, the tort liability system in the United States serves

as a major drag on additional investment. According to one study, cited by the Commerce Department, over the past fifty years annual tort costs in the United States have risen from 0.62% to 1.87% of GDP, far higher than most European nations. Litigation Environment at 5. *See also* Robert Litan, Through Their Eyes: How Foreign Investors View and React to the U.S. Legal System at 17 (citing study comparing tort costs as a percentage of GDP and noting that costs "are higher in the United States than in other developed countries"). While many features of the tort system contribute to the problem, the Commerce Department identified forum shopping as a key cause: "[P]ractices such as forum shopping have contributed to [foreign investors'] fear of litigation (and liability) and are seen as a source of significant investor uncertainty." Litigation Environment at 7. By declaring open season on companies wherever their products are sold or distributed (irrespective whether those products related to a cause of action), the decision below undermines the competitiveness of the United States economy.

Put simply, the lower court's rule obliterates any meaningful constitutional limitation on the forums in which suits may be filed. To hold that commercial transactions supply "a basis for the assertion of *in personam* jurisdiction over unrelated actions . . . would make a mockery of the limitations on state jurisdiction imposed by the Fourteenth Amendment." *Kulko v. Super. Ct.*, 436 U.S. 84, 93 (1978). The effect on forum shopping deprives businesses of an essential predictability about the jurisdictional consequences of their operations and stokes the "fear of litigation and liability" that, according to the Department of Commerce, chills essential investment in the United States.

CONCLUSION

For the foregoing reasons, the judgment of the court below should be reversed.

Respectfully submitted,

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AMICUS CURIAE BRIEF

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IN THE

Supreme Court of the United States

GOODYEAR LUXEMBOURG TIRES, S.A., *et al.*,
Petitioners,

v.

EDGAR D. BROWN, *et al.*,
Respondents.

On Writ of Certiorari to the North Carolina Court of Appeals

BRIEF OF THE ORGANIZATION FOR INTERNATIONAL INVESTMENT AND ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS INC. AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED FOR REVIEW

Whether a foreign corporation is subject to general personal jurisdiction, on causes of action not arising out of or related to any contacts between it and the forum state, merely because other entities distribute in the forum state products initially placed in the stream of commerce by the corporation.

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INTEREST OF THE *AMICI CURIAE*

The Organization for International Investment and the Association of International Automobile Manufacturers Inc. are business associations that have substantial common interests in ensuring stable and predictable legal regimes affecting interstate and foreign commerce, and in promoting policies that secure for their members and this nation the benefits of an open national and global economy.[1]

The Organization for International Investment (OFII) is the largest business association in the United States representing the interests of U.S. subsidiaries of multinational companies before all branches and at all levels of government. OFII is charged with promoting the legal and policy interests of its members, who have a substantial interest in ensuring stable and predictable legal regimes affecting international trade and investment.

OFII's member companies operate throughout the United States, employing hundreds of thousands of workers in thousands of plants and locations across this country, as well as many others. Its members contribute substantially to the U.S. economy. The cumulative value of foreign direct investment in the United States in 2009 was approximately $2.3 trillion. James K. Jackson, Congressional Research Service, *Foreign Direct Investment in the United*

[1] No party's counsel authored this brief (in whole or in part), and no person other than *amici*, their members, or their counsel contributed monetarily to this brief's preparation or submission. *Amici* are advised that, by virtue of blanket consent letters both dated November 5, 2010, from Petitioners and Respondents, all parties consent to the filing of this brief. Petitioners' letter has been docketed; inasmuch as Respondents' letter does not yet appear on the docket, a copy is submitted with this brief.

States: An Economic Analysis 1 (July 28, 2010), *available at* http://www.fas.org/sgp/crs/misc/RS21857.pdf. Direct investment capital inflows in 2008 totaled approximately $325 billion. *Id.* Most of that amount, roughly $260 billion, represents new investments. *Id.* at 4. OFII's goal is to make the United States an increasingly attractive location for companies headquartered outside the United States to conduct more business and employ more Americans within our borders.

The Association of International Automobile Manufacturers Inc. (AIAM) is a not-for-profit trade association that represents international motor vehicle manufacturers and distributors, certain original equipment suppliers, and other automotive-related trade associations. AIAM's mission is to protect and promote the unique interests of international automakers in the United States. It is dedicated to the promotion of free trade and to policies that enhance motor vehicle safety, fuel economy and the environment. AIAM's members account for 40 percent of all passenger cars and light trucks sold annually in the United States. Nationwide, international automakers have invested over $43 billion in U.S.-based production facilities, have a combined domestic production capacity of 4.2 million vehicles, directly employ over 80,000 Americans, and generate almost 600,000 U.S. jobs through dealerships and suppliers nationwide. AIAM's automobile manufacturer members include: American Honda Motor Co., American Suzuki Motor Corp., Aston Martin Lagonda of North America, Inc., Ferrari North America, Inc., Hyundai Motor America, Isuzu Motors America, LLC, Kia Motors America, Inc., Mahindra & Mahindra Ltd., Maserati North America, Inc., McLaren Automotive, Ltd., Mitsubishi

Motors North America, Inc., Nissan North America, Inc. Peugeot Motors of America, Subaru of America Inc. and Toyota Motor North America, Inc.

Automobile manufacturing today is an international business. AIAM's members are subsidiaries of global companies that design, manufacture, distribute and sell passenger vehicles and light-duty trucks all over the world. The legal issues addressed in this case are of major importance to AIAM's member companies, all of whom have considerable experience litigating in state and federal courts in the United States, especially cases involving product liability disputes.

SUMMARY OF ARGUMENT

Not only does the decision below represent a plain legal error regarding the requirements for general jurisdiction, *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414 (1984), it also misapprehends this Court's stream-of-commerce jurisprudence requiring purposeful contacts with the forum state, *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 474 (1985), and ignores the "bedrock principle" of law requiring respect for corporate distinctions. *United States* v. *Bestfoods*, 524 U.S. 51, 61–62 (1998).

The North Carolina Court of Appeals holds that it may assert general jurisdiction over foreign defendants on any claim whatsoever if the "Defendants have 'purposefully injected [their] product into the stream of commerce without any indication that [they] desired to limit the area of distribution of [their] product so as to exclude North Carolina.'" Pet. App. 20a. As Petitioners demonstrate in their brief on the merits, mere sales of a product to a forum state, let alone the

unintentional distribution that occurred here, do not constitute the kind of "continuous and systematic general business contacts" required for the assertion of general jurisdiction. *Helicopteros*, 466 U.S. at 416.

Moreover, the jurisdictional test articulated by the North Carolina Court of Appeals would not even satisfy this Court's requirements for specific jurisdiction. First, ignoring the difference between a state and the United States, the decision below discards the requirement that a defendant have at least some minimum contacts with the forum state in particular. Second, ignoring the requirement for purposeful contacts, the court finds jurisdiction based on what it believes a foreign company "should know" about where an affiliate might distribute products it acquires from the defendant company. Finally, as a fig leaf to disguise its assertion of universal general jurisdiction over any company in the world with affiliates serving the U.S. market, the court offers a new requirement that companies affirmatively avoid particular U.S. states, regardless of whether they have any contacts there in the first place.

Compounding these errors in the law regarding personal jurisdiction, the North Carolina Court of Appeals completely disregards the corporate separateness of the foreign Goodyear companies (the defendants) from the Goodyear entities that actually distributed tires within the United States, attributing without any analysis the actions of the latter to the foreign Goodyear defendants to establish jurisdiction over them.

Based on their members' experience as companies within multinational corporate groups engaged in significant international commerce, *amici* can attest that these legal errors present serious real-world concerns for the conduct of their business and risk

material negative consequences for the flow of international commerce. Indeed, the United States Department of Commerce has reported on the concerns of international investors regarding the fairness and predictability of the U.S. legal environment. See Charles G. Schott, U.S. Dep't of Commerce, *The U.S. Litigation Environment and Foreign Direct Investment: Supporting U.S. Competitiveness by Reducing Legal Costs and Uncertainty* 5–6 (Oct. 2008), *available at* http://www.investamerica.gov/static/Litigation%20and%20FDI%20FINAL_Latest_iia_main_001171.pdf ("*Department of Commerce Report*") (reporting results of multiple studies). Considering the large role that foreign direct investment plays in the U.S. economy and the many contributions that companies such as *amici*'s members make in terms of domestic employment and investment, increasing legal uncertainty risks undermining the continued vitality of the United States as a highly attractive destination for foreign investment.

ARGUMENT

I. THE NORTH CAROLINA COURT OF APPEALS' ERRONEOUS APPLICATION OF AN INCORRECT STREAM-OF-COMMERCE ANALYSIS TO A GENERAL JURISDICTION CASE IMPOSES A SIGNIFICANT BURDEN ON THE CONDUCT OF INTERNATIONAL COMMERCE.

A. The North Carolina Court Of Appeals' Decision Erases A Critical Distinction Between General And Specific Jurisdiction.

This Court has made clear that a state's assertion of general jurisdiction requires a defendant to have

more substantial contacts with the forum state than does the assertion of specific jurisdiction. *Helicopteros*, 466 U.S. at 414–15. This is because general jurisdiction allows a defendant to be sued on any claim in the forum state, whereas specific jurisdiction requires that the claim sued upon arise from or be related to the defendant's contacts with the forum state. *Id.*

Specifically, this Court has instructed that where a plaintiff's claims do "not 'arise out of,' and are not related to," the foreign defendant's activities within the state, a court "must explore the nature of [the defendant's] contacts with the state [] to determine whether they constitute the kind of continuous and systematic general business contacts the Court found to exist in *Perkins* [v. *Benguet Consol. Mining Co.*, 342 U.S. 437 (1952)]." *Helicopteros*, 466 U.S. at 415-16.

In *Perkins*, the Court explained that a state's exercise of jurisdiction over a defendant where the cause of action did not relate to in-state activities goes "one step further" than those cases involving a connection between the in-state conduct and the cause of action. *Perkins*, 342 U.S. at 446. A court may take this further step only where "'the continuous corporate operations within a state were thought *so substantial and of such a nature* as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.'" *Id.* (quoting *Int'l Shoe Co.* v. *Washington*, 326 U.S. 310, 318–19 (1945)) (emphasis added).

The required "continuous and systematic" contacts were found to exist in *Perkins* because the defendant corporation effectively had established its principal place of business in the forum state during the relevant period. 342 U.S. at 447–48; see *Keeton* v.

Hustler Magazine, Inc., 465 U.S. 779 n.11 (1984) (discussing *Perkins*). By contrast, in *Helicopteros*, this Court declined to find general jurisdiction in Texas over a foreign company, even though its employees made regular trips to Texas and conducted some business there. 466 U.S. at 416–17. Thus, the basic requirement for general jurisdiction is a level of "continuous and systematic" contacts that "approximate physical presence in the forum state." *Schwarzenegger* v. *Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004) (internal quotation marks omitted); *Perdue Research Found.* v. *Sanofi-Synthelabo, SA*, 338 F.3d 773, 787 (7th Cir. 2003).

Until the decision below in this case, the general jurisdiction requirement for "continuous" and "substantial" operations "within a state" was sharply distinguished from the mere "deliver[y] [of] products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 298 (1980). Because general jurisdiction broadly allows a defendant to be sued on any claim—whereas specific jurisdiction requires the claim to be connected to the forum—*amici* submit that it is important to maintain the distinction between the two doctrines found in this Court's prior decisions.

B. The North Carolina Court Of Appeals Abandoned The "Constitutional Touchstone" Requiring Purposeful Minimum Contacts Of The Defendant With The Forum State.

While it is not even applicable in this general jurisdiction case, the North Carolina Court of Appeals' articulation of the stream-of-commerce doctrine would be error even in the context of a

specific jurisdiction case.[2] The fact that the court below incorrectly applied the stream-of-commerce doctrine to find general jurisdiction over foreign companies exponentially compounds the error.

In applying a stream-of-commerce analysis, the North Carolina Court of Appeals stated that "the appropriate question" for determining jurisdiction in North Carolina is "whether Defendants have 'purposefully injected [their] product into the stream of commerce without any indication that [they] desired to limit the area of distribution of [their] product so as to exclude North Carolina.'" Pet. App. 20a; see also *id.* at 17a–19a. Yet, as this Court has made clear, "the constitutional touchstone [is] whether the defendant purposefully established 'minimum contacts' in the forum State." *Burger King*, 471 U.S. at 474 (quoting *Int'l Shoe*, 326 U.S. at 316). This test focuses on two key elements: the purposeful actions of the defendant itself and the nature of the defendant's contacts with the forum state in particular, both of which the North Carolina Court of Appeals disregards.

Because the Due Process Clause protects individual liberty against state power, *id.* at 471–72, the focus of a court's personal jurisdiction analysis must be on the actions *of the defendant* that are purposefully directed toward the forum state. The North Carolina Court of Appeals identified not a single action purposefully directed at North Carolina by the foreign Goodyear affiliates that are the defendants. Indeed, the court stated that "the record appears to

[2] *Amici* note that the North Carolina Court of Appeals' stream-of-commerce analysis in this case contains many of the same errors as the New Jersey Supreme Court decision in *J. McIntyre Machinery, Ltd.* v. *Nicastro, ut ex.*, No. 09-1343.

be devoid of evidence that Defendants took any affirmative action to cause tires which they had manufactured to be shipped into North Carolina." Pet. App. 22a. That should have been the end of the inquiry, and the lawsuit should have been dismissed. Instead, the court discussed what the defendants "should have" known based on the fact that they provided tires to other Goodyear affiliates. Due process requires that each defendant's actions be "assessed individually" and each must have the requisite purposeful minimum contacts. *Keeton*, 465 U.S. at 781 n.13; see Section II *infra*.

The court's analysis also fundamentally failed to recognize that the requisite purposeful conduct of the defendant must be directed at the "forum State," not simply the United States in general. For instance, the court concluded that the foreign Goodyear affiliates "knew or should have known that a Goodyear affiliate obtained tires manufactured by [them] and sold them in the United States in the regular course of business." Pet. App. 27a.

The North Carolina Court of Appeals' disregard for the difference between the State of North Carolina and the United States as a whole seriously undermines the bounds that our federal-state system imposes on each individual state. Contrary to the view of the North Carolina Court of Appeals, state lines are not meaningless and North Carolina is not the equivalent of the United States. This Court has held that personal jurisdiction requires minimum contacts with the forum state, not simply any state in the nation. *World-Wide Volkswagen*, 444 U.S. at 293.[3] As this Court emphasized in *World-Wide*

[3] The clear inference to draw from the plurality's analysis in *Asahi* is that state court jurisdiction must be based on contacts

Volkswagen, "we have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution." *Id.* While this Court has expanded the limits of personal jurisdiction from strict territorial presence to minimum contacts with the forum state, it has never accepted the proposition that a state could exercise power over a defendant who has no "'contacts, ties, or relations'" with that state. *Id.* at 294 (quoting *Int'l Shoe*, 326 U.S. at 319). There is no basis for a state to have jurisdiction over a defendant based on the latter's contacts with other states in the nation. Moreover, in the context of a non-U.S. defendant, the need to ensure that states adhere to appropriate limits on their jurisdictional assertions is even stronger, given the importance of comity, presumptions against the extraterritorial reach of U.S. authority, and the preeminent federal (rather than state) role in managing the country's relations with other nations. See, *e.g.*, *Asahi*, 480 U.S. at 115; *Japan Line, Ltd.* v. *Cnty. of L.A.*, 441 U.S. 434, 448 (1979); *Zschernig* v. *Miller*, 389 U.S. 429, 432 (1968); *McCulloch* v. *Sociedad Nacional de Marineros de Hond.*, 372 U.S. 10, 21 (1963); Gary B. Born, *Reflections on Jurisdiction in International Cases*, 17 Ga. J. Int'l & Comp. L. 1, 30–31 (1987); see also Section III *infra*.

In an attempt to create some connection to North Carolina, the court below adopted what this Court has explicitly rejected—allowing mere foreseeability

with that specific state; otherwise, there would have been no reason to contrast that situation with the undecided question of whether a federal court could exercise jurisdiction over a foreign defendant based on national contacts. *See Asahi Metal Indus.* v. *Super. Ct.*, 480 U.S. 102, 113 n.* (1987) (plurality opinion).

to serve as a basis for personal jurisdiction. "'[F]oreseeability' alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause." *World-Wide Volkswagen*, 444 U.S. at 295. Throughout its opinion, the North Carolina Court of Appeals focused on what the defendants "should know" about where their products might end up, rather than on any affirmative actions the defendants actually took to market or direct their products to a particular state. Rejecting similar reasoning, this Court has explained that "[a]lthough it has been argued that foreseeability of causing injury in another State should be sufficient to establish such contacts there when policy considerations so require, the Court has consistently held that this kind of foreseeability is not a 'sufficient benchmark' for exercising personal jurisdiction." *Burger King*, 471 U.S. at 474 (quoting *World-Wide Volkswagen*, 444 U.S. at 295).

In practical effect, the rule would subject a foreign corporation to the general jurisdiction of any state for simply allowing its products to be distributed by another entity with ties to the U.S. market, so long as the products eventually reached that state—even though the corporation did not direct the products there and the claim is unrelated to the products. This rule creates significant and disturbing uncertainty and unpredictability for multinational corporations making fundamental decisions about where and how to do business, in contravention of this Court's instruction that due process allows entities to structure their operations to predict their amenability to suit. *World-Wide Volkswagen*, 444 U.S. at 297.

C. The Decision Below Places An Impractical And Unworkable Obligation On Firms To Take Affirmative Steps To Avoid The Possibility Of Their Products Reaching Particular States.

According to the North Carolina Court of Appeals' interpretation of the stream-of-commerce doctrine, due process requirements for general jurisdiction are somehow satisfied where a defendant has "'purposefully injected [its] product into the stream of commerce without any indication that [it] desired to limit the area of distribution of [its] product so as to exclude North Carolina.'" Pet. App. 20a. This "affirmative avoidance" obligation turns on its head this Court's well-established rule in specific jurisdiction cases, and certainly has no relevance here.

This Court has always looked to a defendant's *purposeful* conduct directed at, or efforts to do business in, a particular state. *Burger King*, 471 U.S. at 472–75. Instead of requiring actual purposeful conduct directed at North Carolina, however, the decision below asserts jurisdiction based on the defendants' failure to avoid the state. Specifically, the court found that the foreign Goodyear affiliates "purposefully and intentionally manufactured tires and placed them in the stream of interstate commerce without any limitation on the extent to which those tires could be sold in North Carolina." Pet. App. 27a. The affirmative avoidance obligation, already an erroneous departure from this Court's precedent, makes no sense in this case, as the foreign Goodyear manufacturers did not even target the United States for their tires. Rather, "the extent to which tires manufactured by Defendants were sold in the United States depended on the extent to which

Goodyear affiliates responsible for distributing tires in the United States exercised the option" of obtaining such tires from the defendants. Pet. App. 25a.

The decision below would, in practice, impose jurisdiction by default anywhere a foreign company's products end up and require a foreign company to take affirmative steps to avoid a particular state, even if it has no contacts there at all. Yet, this Court has rejected the proposition that "[e]very seller of chattels . . . appoint[s] the chattel his agent for service of process." *World-Wide Volkswagen*, 444 U.S. at 296.

Not only is this rule unworkable from a practical perspective, it is also undesirable. The rule would create an incentive for companies to adopt extraordinary measures in the hope of blocking commerce with particular states, increasing costs to consumers and complicating their access to the global marketplace. Given the practical difficulties of affirmatively avoiding individual states, such a rule poses a very clear risk that some foreign producers will choose simply to abandon the United States market altogether.

D. These Combined Legal Errors Increase Legal Uncertainty For Foreign Firms And May Damage U.S. Efforts To Attract Foreign Direct Investment.

The United States is the largest recipient of foreign direct investment in the world.[4] United Nations

[4] Foreign direct investment "occurs when non-resident firms or individuals commit their capital to a country for the long-run, by purchasing a significant interest in existing domestic companies or assets, or creating new domestic legal entities or assets." Robert E. Litan, U.S. Chamber Inst for Legal Reform,

Conference on Trade & Dev., *World Investment Report 2010*, at 4 (June 2010). This investment from abroad is an essential element of the United States economy, creating millions of jobs and proving needed financing for growth. One major explanation for this success is the rule of law and the efforts of all three branches of government to develop a sufficiently stable legal regime to encourage investment.

The U.S. Department of Commerce has reported, however, that the unpredictability and cost of litigation are among the top concerns of foreign businesses considering both whether to invest and whether to continue to invest in the United States. *Department of Commerce Report* at 5–6 (reporting results of multiple studies). For instance, a study jointly commissioned by New York City Mayor Michael Bloomberg and U.S. Senator Charles Schumer found concerns about the United States legal environment among business leaders in the financial services sector. *Sustaining New York's and the U.S.'s Global Financial Services Leadership* 15–16 (Jan. 2007), *available at* http://www.nyc.gov/html/om/pdf/ ny_report_final.pdf ("*Bloomberg-Schumer Report*"). According to the *Bloomberg-Schumer Report*, the business leaders surveyed ranked a "fair and predictable legal environment" as the second most important factor in assessing potential countries in which to do business. *Id.* These business leaders believed the United States was at a disadvantage relative to the United Kingdom, for example, in part because of "concerns

Through Their Eyes: How Foreign Investors View and React to the U.S. Legal System 5 (Aug. 2007), *available at* http://www.instituteforlegal reform.com/component/ilr_docs/29/issue/LAI/STU.html.

that the US legal environment is less fair and less predictable than the UK environment." *Id.*

Part of the unpredictability in the U.S. legal environment comes from our federal system, with its multitude of potential legal regimes that a company may encounter. In the *Department of Commerce Report*, the potential application of federal and state law was noted as a "distinctive feature of the U.S. legal system" that an "international investor might find . . . unfamiliar." *Id.* at 3–4 & Box 1. Yet at that time, the Department was at least able to state with confidence that "[e]ven with 50 States (plus the District of Columbia), it is typically clear *which State legal systems are relevant.*" *Id.* at 4 (emphasis added). If the North Carolina Court of Appeals decision is upheld, the Department could no longer offer potential foreign investors even this modest assurance about the predictability of the U.S. legal environment. Companies that release their products to separate companies within a multinational corporate group with business in the United States risk being haled into court in a state on any claim whatsoever if those affiliates happen to distribute some of those products to the state. Indeed, the U.S. legal system would no longer be one in which businesses can "structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297.

A recent member survey by *amicus* OFII of 65 Chief Executive Officers of U.S. subsidiaries of foreign companies revealed that the costs associated with the United States legal system are seen as a drawback to investing here. OFII, *The Insourcing Survey, A CEO-Level Survey of U.S. Subsidiaries of Foreign Companies* 8 (April 2008), *available at* http://www.

ofii.org/docs/ceo2008.pdf. A study conducted by Robert Litan, commissioned by the U.S. Chamber of Commerce, found similar results. Robert E. Litan, U.S. Chamber Inst. for Legal Reform, *Through Their Eyes: How Foreign Investors View and React to the U.S. Legal System* 5 (Aug. 2007), *available at* http://www.instituteforlegalreform.com/component/ilr_docs/29/issue/LAI/STU.html.[5] In particular, Litan noted that "the multiplicity of governing jurisdictions creates both complexity and uncertainty" and reported that some of those surveyed "believe[d] the complexity and uncertainty stemming from [the U.S.] system may be worse than elsewhere." *Id.* at 16–17. If this fear of uncertainty existed when companies thought they could predict their amenability to suit based on their purposeful contacts with a given state, it will be orders of magnitude worse if foreign companies may be subject to the general jurisdiction of a state court based on the fact that they "should have known" that someone else might send their products somewhere in the United States.

Not only would this rule increase legal uncertainty, it would dramatically expand opportunities for forum shopping. As the Department of Commerce has noted, "[t]he U.S. legal system has had a problem with forum shopping." *Department of Commerce Report* at 7. "Practices such as forum shopping have contributed to [foreign companies'] fear of litigation (and liability) and are seen as a source of significant investor uncertainty." *Id.* at 8. The decision below would allow potential plaintiffs suing a foreign

[5] Litan conducted interviews with representatives of several foreign companies that have invested or established operations in the United States, as well as with attorneys who have counseled foreign companies regarding U.S. investment decisions. *See Id.* at 11–12.

company on any grounds to choose among any U.S. jurisdiction where another company has distributed its products.

Whatever fears of litigation exist in the corporate boardrooms of foreign companies doing business in the United States will be multiplied by a rule that permits the plaintiff's lawyer essentially to choose the forum in which to litigate any claim arising worldwide, simply because a separate company distributed the company's products and those products found their way into the United States. North Carolina's rule, if adopted by this Court, would literally make it open season on foreign corporations and risk a flight from doing business within the United States. The economic effects are outlined below. See Section II.B. *infra*.

II. THE NORTH CAROLINA COURT OF APPEALS' DISREGARD OF CORPORATE DISTINCTIONS WILL NEGATIVELY AFFECT FOREIGN INVESTMENT IN THE UNITED STATES.

In the decision below, not only did the North Carolina Court of Appeals apply the wrong standard to find general jurisdiction, it ultimately found such jurisdiction based on the actions of entities other than the defendants. Specifically, the North Carolina Court of Appeals found that the defendant foreign companies had sufficient contacts with North Carolina to establish general jurisdiction based on the actions of separate companies who distributed tires to the state market. Finding jurisdiction on this basis, whether general or even specific, violates this Court's clear instructions regarding the need for a separate due process analysis as to each defendant and respect for corporate distinctions.

A. The Actions Of Separate Corporate Entities Are Not Attributable To Each Other.

The "respect for corporate distinctions" is a "bedrock principle" of law "deeply ingrained in our economic and legal systems." *Bestfoods*, 524 U.S. at 61–62; *Anderson* v. *Abbott*, 321 U.S. 349, 362 (1944) ("Limited liability is the rule, not the exception; and on that assumption large undertakings are rested, vast enterprises launched, and huge sums of capital attracted."). This fundamental principle of corporate law provides that "a corporation will not be held liable for the acts of its subsidiaries or other affiliated corporations." 1 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Corporations* § 43 (2007).

The rule of corporate separateness applies equally to the issue of personal jurisdiction. *Keeton*, 465 U.S. at 781 n.13; *Cannon Mfg. Co.* v. *Cudahy Packing Co.*, 267 U.S. 333, 338 (1925); see also 18 Fletcher, *supra* § 8640.50 (noting that "where the subsidiary is operated as a distinct corporation, the subsidiary's contacts with the forum cannot be imputed to the parent for jurisdictional purposes"); John A. Swain & Edwin E. Aguilar, *Piercing the Veil to Assert Personal Jurisdiction Over Corporate Affiliates: An Empirical Study of the Cannon Doctrine*, 84 B.U. L. Rev. 445 (2004) (finding that *Cannon* is followed by a majority of courts referencing it).

Based on this "bedrock principle," this Court has long refused to ignore legitimate corporate distinctions in analyzing personal jurisdiction. See *Keeton*, 465 U.S. at 781 n.13; *Rush* v. *Savchuk*, 444 U.S. 320, 332 (1980); *Cannon Mfg. Co.*, 267 U.S. at 338. As this Court has emphasized, "jurisdiction over a parent corporation [does not] automatically establish jurisdiction over a wholly owned subsidiary.

Each defendant's contacts with the forum State must be assessed individually." *Keeton*, 465 U.S. at 781 n.13 (citing *Consol. Textile Co.* v. *Gregory*, 289 U.S. 85, 88 (1933); *Peterson* v. *Chi., R.I. & Pac. R.R.*, 205 U. S. 364, 391 (1907)); *Rush*, 444 U.S. at 332 ("The requirements of *International Shoe*, however, must be met as to each defendant over whom a state court exercises jurisdiction."); *Phila. & Reading Ry.* v. *McKibbin*, 243 U.S. 264, 268 (1917) ("Nor would the fact . . . that 'subsidiary companies' did business within the state, warrant a finding that the defendant did business there."). The application of the doctrine of corporate separateness to questions of personal jurisdiction only makes sense. If a parent corporation cannot be held liable based on the acts of its subsidiary, its jurisdictional fate also should not depend on the actions of its subsidiary. Similar interests are at stake in both circumstances: the need for predictability in structuring business arrangements and investment decisions.

Thus, in a case where a foreign manufacturer's product is sold in, or reaches, the United States through the actions of a separate entity, the court must evaluate "individually" each defendant's contacts with the forum state. It is constitutionally improper to base a finding of general jurisdiction over one company on the grounds that a separate company distributed products in the forum. The fact that two corporations may be affiliated does not change the constitutional analysis. See, *e.g.*, *Keeton*, 465 U.S. at 781 n.13; *McKibbin*, 243 U.S. at 268.

To the extent there are concerns about potential misuse of the corporate form, this Court has made clear that "there is an equally fundamental principle of corporate law, applicable to the parent-subsidiary relationship as well as generally, that the corporate

veil may be pierced and the shareholder held liable for the corporation's conduct when, inter alia, the corporate form would otherwise be misused to accomplish certain wrongful purposes, most notably fraud, on the shareholder's behalf." *Bestfoods*, 524 U.S. at 62. Thus, were a subsidiary company established as part of a scheme to escape liability—contrary to the record here—such unfairness is already addressed by existing law. But in the absence of any suggestion, much less a finding, that the corporate form has been misused, a court should not ignore the "respect for corporate distinctions" by attributing the acts of one corporate entity to another for purposes of finding the requisite jurisdictional contacts.

While this Court has noted that "the parties' relationships with each other may be significant in evaluating their ties to the forum," *Rush*, 444 U.S. at 332, it has always been careful to hold fast to that "constitutional touchstone" by emphasizing that "[t]he requirements of *International Shoe*, however, *must be met as to each defendant* over whom a state court exercises jurisdiction " *Id.* (emphasis added).

This Court has expressly recognized that the Due Process Clause protects the right of defendant corporations to structure their "primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. Providing this "degree of predictability to the legal system" is critical to maintaining a legal environment that continues to attract substantial foreign investment. *Id.*

B. Under The North Carolina Court Of Appeals' Rule, Foreign Companies Would Face Significantly Increased Risk From Having Subsidiaries In The United States.

Companies operating in the global marketplace, whether based in the United States or abroad, utilize a wide variety of corporate structures and business arrangements to bring their products from the place of manufacturing to the end market. Companies may establish subsidiaries or affiliates to serve different countries or regions or may sell their products to independent distributors in a country. These arrangements are not nefarious schemes to be battled by state courts; they are legitimate forms of carrying on beneficial international and interstate commerce. Moreover, many of these arrangements bring significant benefits to the U.S. economy in the form of foreign direct investment. In addition to being wrong as a legal matter, the decision below creates a number of negative consequences.

The North Carolina Court of Appeals goes far beyond any of this Court's precedents regarding either general or specific jurisdiction, subjecting a company to jurisdiction in North Carolina on any claim whatsoever simply because an affiliated company had contacts with the state. Based on the North Carolina Court of Appeals' reasoning, any foreign manufacturer with a U.S. subsidiary that manufactures, sells, or distributes its products would be subject to general jurisdiction in any state in which those products happened to end up.

The U.S. subsidiaries of foreign companies provide significant benefits to the U.S. economy, which this decision risks by increasing legal uncertainty and fueling anxiety. The U.S. subsidiaries of foreign

companies provide jobs to 5.5 million Americans and support an annual payroll of over $400 billion. OFII, *Insourcing Facts*, *available at* http://www.ofii.org/resources/insourcing-facts.html (last visited Nov. 17, 2010) ("*Insourcing Facts*"). Not only do foreign-owned business employ millions of Americans, they also indirectly support an additional 4.6 million jobs because they purchase 80 percent of their inputs from U.S. businesses. U.S. Dep't of Treasury, *Fact Sheet: An Open Economy Is Vital to United States Prosperity* (May 10, 2007), *available at* http://www.treas.gov/press/releases/hp395.htm. What is more, the jobs provided by these U.S. subsidiaries tend to be higher paying, offering an average compensation per worker of $73,124, which is 34.7 percent higher than compensation at all U.S. companies. See *Insourcing Facts*.

These U.S. subsidiaries also make significant investment expenditures here, spending almost $40 billion on research and development and $183 billion on plant construction and new equipment. See *Insourcing Facts*. In addition, they constitute a significant portion of U.S. corporate tax collections, bringing in almost $53 billion in 2007. Internal Revenue Serv., *Historical Summary: Foreign-Controlled Domestic Corporations as a Percentage of All Corporations, Selected Items for Selected Tax Years, 1971-2007*, *available at* http://www.irs.gov/taxstats/bustaxstats/article/0,,id=96311,00.html.[6]

As discussed above, see Section I.D. *supra*, a country's legal environment represents one of the primary considerations when companies consider foreign investment opportunities. While the overall

[6] Data for tax year 2007 is the most recent available from the IRS.

quality and fairness of the United States legal environment is widely recognized, foreign businesses investing here have expressed concern about the cost of litigation in the United States and the fairness and predictability of the legal environment. See *Department of Commerce Report* at 5–6. For companies considering whether to establish subsidiaries here or evaluating their continued investments, the North Carolina Court of Appeals decision represents a significant blow to both fairness and predictability.

III. THE NORTH CAROLINA COURT OF APPEALS' RULE OVERREACHES ITS SOVEREIGN POWER AND INTERFERES WITH THE CONDUCT OF THE NATION'S FOREIGN RELATIONS.

At their core, the requirements for personal jurisdiction derive from the inherent limits of state authority. See, *e.g.*, *Hanson* v. *Denckla*, 357 U.S. 235, 251 (1958) (holding that the "requirements for personal jurisdiction over nonresidents . . . . are a consequence of territorial limitations on the power of the respective States"). More recently, this Court has strongly reaffirmed the fundamental underlying basis for personal jurisdiction, which is a state or nation's sovereign power over its territory. *Burnham* v. *Super. Ct.*, 495 U.S. 604, 608–09, 618 (1990). This is why, even when expanding the limits of personal jurisdiction to allow jurisdiction over nonresident defendants, this Court has always required the existence of "'minimum contacts' between the defendant and the forum State." *World-Wide Volkswagen*, 444 U.S. at 291 (quoting *Int'l Shoe*, 326 U.S. at 316).

Moreover, because the North Carolina Court of Appeals decision burdens non-U.S. entities and

international commerce, it presents a special concern. *Asahi Metal Indus. Co.* v. *Super. Ct.*, 480 U.S. 102, 115 (1987). A majority of this Court in *Asahi* concluded that a case involving a non-U.S. defendant calls for special consideration of the interests of other nations "as well as the Federal interest in Government's foreign relations policies." *Id.* The Court instructed that these interests require "a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case" and cautioned that "'[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.'" *Id.* (quoting *United States* v. *First Nat'l City Bank*, 379 U.S. 378, 404 (1965) (Harlan, J., dissenting)).

In this case, the North Carolina Court of Appeals' failure to apply the proper test for general jurisdiction involves more than just a question of individual liberty or interstate federalism; it touches on the proper role of the states vis-à-vis the federal government. The primacy of the federal role in relations with foreign governments and persons pervades the federal system established by the Constitution. See Born, *supra*, at 29–31, n.123. And, while this case does not involve direct state regulation of foreign commerce, the Constitution's express grant of power to Congress to "regulate Commerce with foreign Nations," U.S. Const. art. I, § 8, cl. 3, embodies the notion that "[f]oreign commerce is pre-eminently a matter of national concern." *Japan Line*, 441 U.S. at 448. As such, "'[i]n international relations and with respect to foreign intercourse and trade the people of the United States act through a single government with unified and adequate national power.'" *Id.* (quoting *Bd. of Trustees* v. *United States*, 289 U.S. 48, 59 (1933)).

This is for good reason: if state courts are allowed to follow the expansive rule of general jurisdiction adopted by the North Carolina Court of Appeals, courts in other countries, perhaps with legal systems less impartial and independent, may well follow suit. See, *e.g.*, *McCulloch* v. *Sociedad Nacional de Marineros de Hond.*, 372 U.S. 10, 21 (1963) (recognizing that perceived affronts to foreign sovereign interests could "invite retaliatory action from other nations").

While the grant of the foreign commerce power to Congress does not preclude state courts from exercising jurisdiction over foreign companies, it does call for heightened scrutiny to ensure that states' assertions of jurisdiction stay within their legitimate bounds and are reasonable. *Asahi*, 480 U.S. at 115. It also means that there is a branch of government with ample authority to weigh the competing concerns associated with the expansion of our global economy. That institution is Congress. But, in all events, a state's exercise of general jurisdiction over a foreign company with no "contacts, ties, or relations" to that state cannot stand under our Constitutional system. *Int'l Shoe*, 310 U.S. at 319. This Court should reaffirm the fundamental principles of due process that protect each individual defendant from state court overreaching.

The rule adopted by the North Carolina Court of Appeals would allow North Carolina to assert general jurisdiction, on any claim whatsoever, over a company from any nation whose products happen to end up in the state. Not only is this unreasonable under the "great care" urged by the Asahi majority, it goes well beyond the "'traditional notions of fair play and substantial justice'" that allow jurisdiction over an "absent," or foreign, defendant "only with respect

to suits arising out of the absent defendant's contacts with the State." *Burnham*, 495 U.S. at 609–10 (quoting *Int'l Shoe*, 326 U.S. at 316).

CONCLUSION

For the reasons set forth above, and in the Brief for Petitioners, the decision below should be reversed.

Respectfully submitted,

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AMICUS CURIAE BRIEF

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In the Supreme Court of the United States

GOODYEAR LUXEMBOURG TIRES, SA, ET AL.,

Petitioners,

v.

EDGAR D. BROWN, ET AL.,

Respondents.

On Writ of Certiorari to the North Carolina Court of Appeals

BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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BRIEF OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

INTEREST OF THE *AMICUS CURIAE*[1]

The Product Liability Advisory Council, Inc. (PLAC) is a non-profit corporation with 100 corporate members representing a broad cross-section of American industry. Its corporate members include manufacturers and sellers of a wide array of products, including automobiles, aircraft, electronics, chemicals, pesticides, pharmaceuticals, and medical devices. A list of PLAC's current corporate membership is included in an appendix to this brief.

PLAC's primary purpose is to file *amicus curiae* briefs in cases raising issues that affect the development of product liability litigation and have potential impact on PLAC's members. This is such a case. PLAC's members are frequently named as defendants in lawsuits involving products distributed in interstate and international commerce, as well as in other types of litigation in which courts attempt to assert the potent form of adjudicative jurisdiction known as "general" jurisdiction. Accordingly, PLAC's members have a vital interest in ensuring that state courts adhere to the traditional, strict limitations on general jurisdiction that have been developed in this

[1] The parties' blanket letters of consent to the filing of *amicus* briefs have been filed with the Clerk. Under S. Ct. Rule 37.6, *amicus curiae* states that no counsel for a party has authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than the *amicus curiae*, its members, or its counsel, has made a monetary contribution to this brief's preparation or submission.

Court's decisions and applied by the lower federal and state courts for decades, but that were disregarded by the North Carolina courts in this case.

STATEMENT

A. The Fundamental Distinction Between General And Specific Jurisdiction

The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a valid judgment against a nonresident defendant. *Kulko* v. *Superior Court of California*, 436 U.S. 84, 91 (1978); *Pennoyer* v. *Neff*, 95 U.S. 714, 732-33 (1878). A state court may exercise *in personam* jurisdiction over a nonresident only if the defendant has "certain minimum contacts" with the forum "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945) (internal quotations omitted). This requirement of minimum contacts ensures that a defendant has "fair warning" that a decision to engage in particular activities may subject it to the jurisdiction of a foreign sovereign. *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 472 (1985).

The nature and number of contacts that give rise to such fair warning hinge on a crucial distinction reflected in this Court's cases: whether the state court is exercising specific or general jurisdiction. See *id.* at 472-73. When the cause of action does not arise out of or relate to the defendant's activities in the forum, those forum activities must be sufficiently "continuous and systematic" as well as "substantial" to make the assertion of *in personam* jurisdiction reasonable. *Perkins* v. *Benguet Consolidated Mining*

Co., 342 U.S. 437, 445-46 (1952). This Court has distinguished such "general" jurisdiction from "specific" jurisdiction, which requires a much lesser showing of forum contacts by the defendant but may be asserted only if the plaintiff's claims "arise out of or relate to" those contacts. *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414 & nn.8-9 (1984).

Although this Court did not expressly adopt the terms "general" and "specific" jurisdiction until its decision in *Helicopteros*, the distinction can be traced back to the origins of the minimum contacts test in *International Shoe*. There, the Court explained that a state's assertion of personal jurisdiction over a foreign corporation most readily comports with due process where the defendant's forum activities "give rise to the liabilities sued on." *International Shoe*, 326 U.S. at 317. The Court also recognized, however, other cases where the "*continuous corporate operations within a state* were thought [to be] *so substantial and of such a nature* as to justify suit against [the foreign corporation] on causes of action arising from dealings entirely distinct from those activities." *Id.* at 318 (emphasis added).

Since *International Shoe*, this Court has reinforced the strict demarcation between specific and general jurisdiction—and the more stringent due process requirements that attend the latter. See *Burnham* v. *Superior Court of California*, 495 U.S. 604, 610, 618 (1990) (plurality opinion); *Burger King*, 471 U.S. at 472-73 & n.15; *Helicopteros*, 466 U.S. at 415; *Calder* v. *Jones*, 465 U.S. 783, 786-88 (1984); *Perkins*, 342 U.S. at 446-48. As a leading commentator has noted, the "general-specific jurisdiction distinction" is "extremely significant"

because of the far-reaching consequences for a defendant that attend the exercise of general jurisdiction. 4 C. WRIGHT & A. MILLER, FEDERAL PRACTICE & PROCEDURE § 1067.5, at 507 (3d ed. 2002). If a state court has general jurisdiction over a product manufacturer or other defendant, the court may compel the defendant to appear and defend against litigation that has *nothing to do* with the forum—including lawsuits initiated by plaintiffs with no connection to the forum that involve disputes over business activities of the defendant occurring halfway around the world.

B. The Exacting Standards Of General Jurisdiction

In *International Shoe*, this Court indicated that the standards governing general jurisdiction are demanding, requiring "*continuous* corporate operations *within* a state" that are "*substantial*" in nature. 326 U.S. at 318 (emphasis added). Subsequently, in *Perkins*, this Court reiterated these stringent requirements. See 342 U.S. at 447, 448 (forum activities must be "continuous and systematic" as well as "sufficiently substantial"). Those exacting standards were satisfied in *Perkins* only because the corporation's activities were so extensive that they rendered Ohio "the corporation's principal, if temporary, place of business." *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 779 n.11 (1984). See also pages 16-17, *infra* (discussing *Perkins*). In *Helicopteros*, by contrast, the defendant corporation lacked the requisite substantial, continuous, and systematic activities in Texas, despite having engaged in numerous forum-related activities. See also pages 17-18, *infra* (discussing *Helicopteros*).

Taking their cue from this Court's decisions, the lower courts have long "evinced a reluctance to assert general jurisdiction over nonresident . . . foreign corporations even when the contacts with the forum State are quite extensive." 16 J. MOORE, MOORE'S FEDERAL PRACTICE § 108.41[3] (3d ed. 2003).

C. The Genesis Of The Stream Of Commerce Theory Of Specific Jurisdiction

Just as this Court has consistently distinguished specific from general jurisdiction, it has repeatedly suggested that the stream of commerce theory provides a basis for *specific* jurisdiction only. The stream of commerce theory was first discussed in *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980), which held that the Oklahoma courts could not exercise jurisdiction over a nonresident auto retailer and a regional distributor serving retailers in New York, New Jersey, and Connecticut, based on the fact that an automobile sold by the retailer in New York to New York residents was later driven to Oklahoma (where it was involved in an accident). Although neither the foreign manufacturer (Audi) nor its U.S. importer (Volkswagen) was contesting personal jurisdiction, the Court nevertheless observed:

> [I]f the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States *if its allegedly defective merchandise has there been the source of injury* to its owners or to others. The forum State does not

> exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

444 U.S. at 297-98 (emphasis added).

In its very first articulation of the stream of commerce theory, then, this Court limited that theory to claims arising from the defendant's forum contacts. In *Burger King* the Court reaffirmed that limitation, explaining that due process permits "personal jurisdiction over a corporation that delivers its product into the stream of commerce with the expectation that they will be purchased by consumers in the forum State *and those products subsequently injure forum consumers.*" *Burger King*, 471 U.S. at 473 (emphasis added) (internal quotations omitted).

In *Asahi Metal Industry Co.* v. *Superior Court of California*, 480 U.S. 102 (1987), the Court split 4-4 on whether the mere placement of a product into the stream of commerce, without more, can serve as the basis for *in personam* jurisdiction. Consistent with this Court's statements in *World-Wide Volkswagen* and *Burger King*, *Asahi* was a specific jurisdiction case involving injuries sustained in the forum. Nothing in either Justice O'Connor's or Justice Brennan's opinion signaled a retreat from this Court's prior suggestions that the stream of commerce theory, where applicable, was a theory of specific jurisdiction.

D. The Proceedings Below

This case arises out of a tragic bus accident that occurred near Paris, France on April 18, 2004. Two

North Carolina teenagers died as a result of injuries sustained in the accident, which allegedly was caused by a faulty tire. The decedents' estates (respondents here) filed suit in North Carolina state court against various defendants, including three foreign tire manufacturers: Goodyear Luxembourg Tires, SA, Goodyear Lastikleri T.A.S. (a Turkish company), and Goodyear Dunlop Tires France, SA. Respondents claimed that these three foreign companies (petitioners here) designed, manufactured, and sold the allegedly defective tire that caused the accident. See also Pet. Br. 2-4 (describing record evidence of petitioners' business operations and activities).

Petitioners moved to dismiss for lack of personal jurisdiction, arguing that they lacked the requisite minimum contacts with North Carolina because they had no presence in the state and the tire in question was manufactured in Turkey, sold and used in France, and involved in an accident in France. The trial court denied the motion, concluding that it possessed general jurisdiction over petitioners because other tires they manufactured (unrelated to the accident) were distributed in North Carolina by other Goodyear affiliates between 2004 and 2007. Pet. App. 32a-36a. The trial court emphasized, among other things, that petitioners "knew or should have known that th[eir] tires were distributed for sale to North Carolina residents" and that North Carolina "has a substantial interest in allowing its citizens a forum for the redress of grievances." Pet. App. 33a, 35a; see also Pet. Br. 4-5. At various points in its decision, the trial court pointed to the activities of petitioners' corporate affiliates, including their parent company, the Goodyear Tire and Rubber Company ("Goodyear"), which "is based in the United

States," without explaining why the activities of these separate corporate entities were relevant to the exercise of general jurisdiction over petitioners.[2]

The North Carolina Court of Appeals affirmed. Pet. App. 1a-29a. At the outset, the court acknowledged that respondents' cause of action was unrelated to petitioners' contacts with North Carolina, and accordingly this case "involves general rather than specific jurisdiction." *Id.* at 12a-13a. The court went on, however, to conclude that the "higher threshold" for general jurisdiction can be satisfied if a defendant "delivers its products into the stream of commerce with the expectation that they will be purchased in the forum state." *Id.* at 13a-14a. (internal quotations omitted). The Court of Appeals then applied the stream of commerce theory and, on that basis, concluded that the trial court properly exercised general jurisdiction in this case.

In reaching that result, the Court of Appeals, unlike the trial court, focused on the activities of petitioners themselves as opposed to the conduct of their separate corporate affiliates. "The 'continuous and systematic contacts' required for the assertion of general personal jurisdiction," the Court of Appeals explained, "must result from the actions *by Defendant* rather than from mere happenstance or coincidence

[2] See, *e.g.*, Pet. App. 34a (noting that petitioners were "subsidiaries of Goodyear in the United States and *as such* have additional, abundant ties to the United States) (emphasis added); *id.* at 33a (noting that petitioners "used their Goodyear parent and affiliated companies to distribute the tires they manufactured to the United States and North Carolina"); *id.* at 35a (citing the "ownership" of petitioners "by U S corporations doing substantial business in North Carolina" as a factor that "weighs in favor of a finding of general jurisdiction").

or the actions of others." Pet. App. 13a (emphasis added). Applying that principle, the Court of Appeals rejected the trial court's finding that petitioners had somehow "'caused' a certain number of tires to be shipped to North Carolina." *Id.* at 22a. The Court of Appeals explained:

> [T]he record appears to be devoid of evidence that [petitioners] took any affirmative action to cause tires which they had manufactured to be shipped into North Carolina. On the contrary, the available evidence tends to show that *other entities* were responsible for the shipment of tires manufactured by [petitioners] to the United States and, as a part of that process, the tires arrived in North Carolina. As a result, our analysis of the trial court's findings is informed by our understanding that [petitioners], *as separate corporate entities*, were *not* directly responsible for the presence in North Carolina of tires that they had manufactured.

Id. at 22a-23a (emphasis added). But cf. *id.* at 25a-26a (relying on the supposedly "continuous and systematic" distribution process "employed within the Goodyear organization").[3]

Despite acknowledging petitioners' ultimate lack of responsibility for "the presence in North Carolina of tires that they had manufactured" (Pet. App. 22a-23a), the Court of Appeals upheld general jurisdiction because: (1) several thousand tires "eventually found their way" into the state and petitioners made "no

[3] The Court of Appeals also rejected as improperly classified the trial court's finding of "fact" that petitioners had continuous and systematic contacts with the forum Pet. App. 22a.

attempt to keep these tires from reaching the North Carolina market," *id.* at 27a, 25a; and (2) those tires contained certain U.S. Department of Transportation markings and other information written in English, suggesting that the foreign manufacturers knew that the tires "could, if business conditions supported such a move, be sold in the United States," *id.* at 25a. The court also noted that North Carolina had an interest in the proceedings and that requiring respondents to litigate in French courts would impose a significant burden on them. *Id.* at 26a.

Based on these determinations, the Court of Appeals held that petitioners "purposefully and intentionally manufactured tires and placed them in the stream of interstate commerce without any limitation on the extent to which those tires could be sold in North Carolina." Pet. App. 27a. Although petitioners argued that delivering goods into the stream of commerce cannot support a finding of general jurisdiction, the Court of Appeals rejected that argument as unsupported by North Carolina precedent (and declined to address the decisions in many other jurisdictions holding that general jurisdiction may *not* be exercised based on the stream of commerce theory). See *id.* at 28a; see also Pet. Br. 37. The Supreme Court of North Carolina denied review. Pet. App. 37a-38a.

INTRODUCTION AND SUMMARY OF ARGUMENT

The question presented in this case is whether this Court should permit the eradication or blurring of one of the few bright-line rules in the field of personal jurisdiction: the crucial and time-tested distinction between general and specific jurisdiction.

By converting a particular theory of specific jurisdiction—the stream of commerce test—into a theory of general jurisdiction, the lower court blurred that critical distinction, which has stood fast for the past half century. This Court should take this opportunity to make clear what virtually all of the lower courts to face the issue have grasped: that the stream of commerce theory cannot serve as a basis for general jurisdiction. See Pet. Br. 37 (citing cases). Put simply, the mere act of placing a product into the stream of commerce can never constitute the substantial, continuous, and systematic activities within the forum that are required for the exercise of general jurisdiction. Nor is it sensible to read the Due Process Clause as permitting a state court to exercise the sweeping adjudicatory power of general jurisdiction over a nonresident defendant on the basis of such an insubstantial connection between the defendant and the forum state.

I. The longstanding distinction between general and specific jurisdiction stems from the fact that general jurisdiction remains firmly grounded in the defendant's substantial and continuous "presence" in the forum state tantamount to the state's serving as the defendant's home base. Thus, in *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), the only occasion on which this Court has upheld general jurisdiction over a corporation under the test set forth in *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), the Court looked to the traditional indicia of corporate presence—local offices, facilities, employees, and operations—and concluded, based on those factors, that the defendant was sufficiently present in the forum state to warrant jurisdiction. In other words, the "continuous and

systematic" activities within the forum that are also "sufficiently substantial" in nature (*Perkins*, 342 U.S. at 447, 448) to support general jurisdiction are those that create a *bona fide* corporate home in the forum.

In contrast, specific jurisdiction can rest on more attenuated contacts that come nowhere near establishing such a corporate presence in the forum. Moreover, while the doctrine of specific jurisdiction has evolved in response to advances in technology and the changing nature of commerce, general jurisdiction has remained a Rock of Gibraltar, remarkably faithful to traditional American jurisdictional principles. That is due, in no small part, to the significant consequences that necessarily attach to general jurisdiction. If a state may exercise general jurisdiction over a foreign defendant, it can compel that individual or entity to appear and defend against all manner of claims that have nothing whatsoever to do with the state or with any forum activities.

This Court's consistent limitation of the stream of commerce theory to assertions of specific jurisdiction is hardly surprising. It reflects the fact that depositing a product into the stream of commerce somewhere outside the forum state, without more, can never constitute the corporate "presence" in that state necessary to sustain general jurisdiction. Such an act simply bears no resemblance—none—to "continuous corporate operations *within* a state" that are "substantial." *International Shoe*, 326 U.S. at 318 (emphasis added). Moreover, petitioners' actions in this case—selling products to third-party distributors with the knowledge that the products *could* ultimately find their way to the forum state—are not

nearly as substantial as those that this Court held were insufficient to support general jurisdiction in *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408 (1984). The North Carolina Court of Appeals' assertion of general jurisdiction based on the stream of commerce theory therefore directly contradicts this Court's precedents and flouts traditional American jurisdictional principles. Nor can respondents defend the decision below by relying on the forum contacts not of petitioners themselves but of their separate and independent corporate affiliates.

II. The lower court's confusion about the relationship between general jurisdiction and the stream of commerce theory also ran afoul of the fundamental requirements of due process. This Court has explained that a state may not exercise jurisdiction over a defendant unless the defendant would, based on its contacts with the forum, reasonably expect to be haled into court there. That due process requirement is easier to satisfy with respect to specific jurisdiction: a potential defendant who purposefully directs products to forum residents may reasonably expect, under certain circumstances, to be subject to suit there in the event that *those products cause injury in the forum*. But a potential defendant does not expect to be haled into state court regarding activities *wholly unrelated* to its forum contacts unless those contacts are so substantial and continuous that the forum is the equivalent of the defendant's home state. By conflating the requirements of specific and general jurisdiction, then, the lower court's decision undermines the predictability and fairness that due process demands.

Failure in this case to reaffirm and apply the rigorous standards governing general jurisdiction will have far-reaching, negative consequences for U.S. companies. Other nations have already demonstrated a willingness to retaliate in response to overly expansive assertions of state court jurisdiction. If the lower court's decision is upheld, U.S. companies will undoubtedly face reciprocal treatment abroad, with the result that many will be haled into foreign courts and forced to answer for activities that have nothing to do with those distant countries and indeed may occur wholly in the United States. Strict adherence to this Court's general jurisdiction jurisprudence is therefore necessary to foster international comity, protect the interests of U.S. product manufacturers and other companies, and prevent state courts from impermissibly extending their territorial reach to encompass any and all corporate activities across the globe.

ARGUMENT

I. THIS COURT SHOULD REAFFIRM THE CRUCIAL DISTINCTION BETWEEN SPECIFIC AND GENERAL JURISDICTION AND MAKE CLEAR THAT THE STREAM OF COMMERCE THEORY CANNOT SUPPORT THE LATTER

A. The Concept Of General Jurisdiction Is Firmly Grounded In The Defendant's Substantial And Continuous "Presence" In The Forum State

Traditionally, *in personam* jurisdiction was grounded on the state court's "de facto power over the defendant's person." *International Shoe Co.* v.

Washington, 326 U.S. 310, 316 (1945). An individual's physical presence within a state's territory was thus a prerequisite to rendition of a binding judgment against that person. *Ibid.*; *Pennoyer* v. *Neff*, 95 U.S. 714, 733-34 (1878). Corporations, however, never fit comfortably within the *Pennoyer* paradigm because the corporation itself, as opposed to its property or agents, has no real physical presence within a state.

International Shoe responded to that lack of fit. The case also addressed the need to justify jurisdiction over corporations whose agents' actions within a state gave rise to legal claims even though the corporation was not incorporated or based there. As the Court observed, "[s]ince the corporate personality is a fiction . . . it is clear that unlike an individual its 'presence' without, as well as within, the state of its origin can be manifested only by activities carried on its behalf by those who are authorized to act for it." *International Shoe*, 326 U.S. at 316 (internal citation omitted). The minimum contacts test enunciated in *International Shoe* was thus an effort to delineate what forum-related corporate activities would warrant jurisdiction over a foreign corporation when a claim arose from those activities: "'Presence' in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on." *Id.* at 317. See also *Lesnick* v. *Hollingsworth & Vose Co.*, 35 F.3d 939, 942 (4th Cir. 1994) ("Even though the Court in *International Shoe* recognized for the first time an expanded state power to exercise jurisdiction over a person not physically 'present'

there, its holding was rooted in finding a suitable analogy for the 'presence' of the out-of-state party.").

General jurisdiction is therefore inextricably tied to a territorial framework and has, since *International Shoe*, remained firmly rooted in the traditional notion of a substantial corporate presence within the forum state approximating a home base. Indeed, in *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), and *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408 (1984), the only occasions on which this Court has analyzed general jurisdiction over corporate defendants, the Court hewed closely to the traditional indicia of a substantial corporate presence as reflected in local offices, employees, and operations.

Perkins involved a suit in the Ohio courts by a shareholder of a mining concern organized under the laws of the Philippines. The company's mining operations were in the Philippines but had been "completely halted during the occupation of the Islands by the Japanese." 342 U.S. at 447. During that suspension, the company's president had returned to Ohio, where he "maintained an office," "kept the[] office files of the company," carried on "correspondence relating to the business . . . and to its employees," "drew and distributed" salary checks for himself and two secretaries "who worked there with him," "used and maintained" two active bank accounts "carrying substantial balances of company funds," used another bank as transfer agent for the company's stock, held several directors' meetings, "supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines," and "dispatched funds to cover purchases of machinery for

such rehabilitation"—effectively establishing, with all of this activity, a new corporate primary place of business. *Id.* at 447-48. Because those activities in Ohio amounted to the "continuous and systematic supervision of the necessarily limited wartime activities of the company," this Court concluded that they constituted a sufficient basis for the exercise of general jurisdiction. *Id.* at 448. See also *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 779 n.11 (1984) (noting that in *Perkins* Ohio had become "the corporation's principal, if temporary, place of business").

By contrast, in *Helicopteros*, the Court reversed a decision of the Texas Supreme Court that had upheld the exercise of general jurisdiction over a Colombian corporation with its principal place of business in Bogota. The defendant, which provided helicopter transportation for oil and construction companies in South America, was sued after a helicopter it owned crashed in Peru, killing four U.S. citizens. This Court rejected the argument that Texas could assert general jurisdiction, even though the defendant purchased most of its helicopters, spare parts, and equipment (together worth more than $4 million) from a company located in Texas, sent its CEO to Texas for a contract-negotiation session, sent other personnel to Texas for training, and accepted into its New York bank account checks drawn on a Texas bank. *Helicopteros*, 466 U.S. at 410-11, 416-19. Even such extensive contacts with Texas, the Court explained, did not "constitute the kind of continuous and systematic general business contacts" necessary to support general jurisdiction. *Id.* at 416. In reaching that conclusion, the Court observed that the defendant lacked the traditional characteristics of

corporate presence in the forum such as offices, employees, operations, or property. *Id.* at 411-12.

Notably, the Court in *Helicopteros* also reaffirmed *Rosenberg Bros. & Co.* v. *Curtis Brown Co.*, 260 U.S. 516 (1923), a pre-*International Shoe* decision involving a corporate defendant. *Helicopteros*, 466 U.S. at 417-18 & n.12. That case addressed the question "whether, at the time of the service of process, defendant was doing business within the state of New York in such manner and to such extent as to warrant the inference that it was *present* there." *Rosenberg*, 260 U.S. at 517 (emphasis added). This Court concluded that the corporation's forum activities—consisting of purchases and related trips—were not a sufficient basis for the state's assertion of jurisdiction in light of the fact that the corporation lacked an established place of business in the forum and never regularly carried on business there. *Id.* at 518.

Perkins, *Helicopteros*, and *Rosenberg* thus confirm the requirement of traditional indicia of corporate presence as a prerequisite for the exercise of general jurisdiction. In other words, general jurisdiction may be exercised only where a defendant has effectively made the forum its "home"—either through incorporation under the state's laws or through very substantial and continuous business operations within the forum. Only if the corporation has truly made the forum its home may a state exercise the potent authority of general jurisdiction to compel a defendant to defend in the state's courts against litigation having no connection whatsoever to the forum. Lower courts have faithfully applied this well-settled framework, expressly requiring a

defendant's contacts to be "sufficiently extensive and pervasive to approximate physical presence" in order to justify general jurisdiction. *Tamburo* v. *Dworkin*, 601 F.3d 693, 701 (7th Cir. 2010); see also, *e.g.*, *Bancroft & Masters, Inc.* v. *Augusta Nat'l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000).

B. Unlike Specific Jurisdiction, Which Has Been Adapted To New Circumstances, General Jurisdiction Has Remained Constant And Faithful To Its Roots

One of the hallmarks of specific jurisdiction is that its contours have changed over time in response to the growing nationalization and internationalization of commerce. See, *e.g.*, *World-Wide Volkswagen*, 444 U.S. at 292-93; *Developments in the Law—State-Court Jurisdiction*, 73 HARV. L. REV. 911, 919 (1960) ("*Developments*") (noting with respect to *Pennoyer* era that "[a]s corporate transactions increasingly assumed a nation-wide character, it became necessary for the states to find some ground upon which jurisdiction could be asserted over foreign corporations"). For that reason, by 1960 the law had developed so that "[t]here [was] little doubt that a corporation [was] amenable to state jurisdiction in a tort action even though it has carried on only isolated or sporadic activity within the forum state, *so long as the alleged tort grew out of that activity*." *Id.* at 926 (emphasis added).

One example of such adaptability is this Court's endorsement of an "effects test" that permits the assertion of specific jurisdiction over claims arising out of certain types of *intentional* tortious acts by nonresident defendants, where those acts are specifically aimed at the forum and cause harm there.

See *Calder* v. *Jones*, 465 U.S. 783, 788-89 (1984) (libel action). Another example, of course, is the stream of commerce theory, which authorizes a state court under certain circumstances to assert jurisdiction in product liability actions over nonresident or foreign manufacturers whose products are sold into the forum and cause injuries there (provided there is sufficient evidence of the defendant's purposeful availment). See *Asahi Metal Industry Co.* v. *Superior Court of California*, 480 U.S. 102, 111-13 (1987) (plurality opinion of O'Connor, J.). Lower courts have authorized further expansions of the doctrine of specific jurisdiction—with the Ninth Circuit, for example, even going so far as to adopt a broad "but for" test for determining whether a plaintiff's claim arises out of or relates to a defendant's forum contacts. See *Shute* v. *Carnival Cruise Lines*, 897 F.2d 377, 385 (9th Cir. 1990), *rev'd on other grounds*, 499 U.S. 585 (1991).

The test for general jurisdiction, however, has remained relatively static. According to the American Law Institute:

> A state has power to exercise judicial jurisdiction over a foreign corporation which does business in the state with respect to causes of action that do not arise from the business done in the state if this business is so continuous and substantial as to make it reasonable for the state to exercise such jurisdiction.

RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 47(2) (1971). The *Restatement* also notes—citing *Perkins*—that "[s]uch jurisdiction is particularly likely to exist in situations where the corporation's principal place of business is in the State." *Id.* § 47

cmt. e. As Professors von Mehren and Trautman explained in an influential article, general jurisdiction in the corporation's state of incorporation or "principal place of business" is the historic rule:

> From the beginning in American practice, general adjudicatory jurisdiction over corporations and other legal persons could be exercised by the community with which the legal person had its closest and most continuing legal and factual connections. The community that chartered the corporation and in which it has its head office occupies a position somewhat analogous to that of the community of a natural person's domicile and habitual residence. If a corporation's managerial and administrative center is in a state other than its state of incorporation, presumably general jurisdiction should exist in either community.

von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1141-42 (1966) (cited for the definitions of general and specific jurisdiction in *Helicopteros*, 466 U.S. at 414 n.8).

As a result of the increased nationalization and internationalization of commerce, it was inevitable that "specific jurisdiction [would] come into sharper relief and form a considerably more significant part of the scene." *Id.* at 1164. But because specific jurisdiction has already adapted to address these societal conditions, and because of the dramatic consequences that attach to general jurisdiction (permitting any claim to be asserted against the defendant, even if wholly unconnected to the defendant's forum contacts), courts understandably have been far more reluctant to expand the doctrine of general jurisdiction.

This Court has expressly recognized that it is only specific jurisdiction that has been broadened by *International Shoe*. In *Burnham* v. *Superior Court of California*, 495 U.S. 604 (1990), the plurality opinion acknowledged that the Court has approved the assertion of personal jurisdiction over absent defendants "in a manner that deviates from the rules of jurisdiction applied in the 19th century"—*i.e.*, in cases where the defendant's contacts with the forum bear little resemblance to "presence" in the literal sense. *Id.* at 610. That departure, the plurality noted, was necessitated by technological advances and the changing nature of commerce, which led to a relaxation of the strict limits on state jurisdiction. *Id.* at 617. Importantly, however, the Court has approved such deviations from "traditional notions" of jurisdiction *only* "with respect to suits arising out of the absent defendant's contacts with the State"—*i.e.*, with respect to *specific* jurisdiction. *Id.* at 609-10. The clear lesson is that general jurisdiction continues to require substantial, continuous, and systematic forum contacts akin to the significant physical presence in the forum required under "traditional notions" of personal jurisdiction.[4]

[4] The serious mismatch between the stream of commerce theory and the doctrine of general jurisdiction is confirmed by the difference in *time frames* that apply to each jurisdictional inquiry. Whereas general jurisdiction requires a showing of forum activities that have been "continuous" during a reasonable time period leading up to the time the complaint is filed, see 4 C. WRIGHT & A. MILLER, *supra*, § 1067.5, at 520-21; *Harlow* v. *Children's Hosp.*, 432 F 3d 52, 64-65 (1st Cir 2005). the stream of commerce theory often hinges on the actions of a manufacturer in designing or manufacturing the injury-causing

C. The Lower Court Improperly Applied The Stream Of Commerce Test As A Means Of Establishing General Jurisdiction

The North Carolina Court of Appeals correctly recognized that it could assert general jurisdiction over petitioners only if their forum activities were "sufficiently continuous and systematic, a higher threshold than that required to support the exercise of specific jurisdiction." Pet. App. 13a (internal quotations and citation omitted). The court went astray, however, in concluding that this Court had found that standard satisfied "where a corporation 'delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.'" *Id.* at 14a (quoting *World-Wide Volkswagen*, 444 U.S. at 298). In so holding, the court departed sharply from the traditional notions of personal jurisdiction and collapsed the careful distinction this Court has repeatedly drawn between specific and general jurisdiction.

That fundamental error infected the lower court's entire decision. Because it imported a *specific* jurisdiction standard (the stream of commerce test) into the *general* jurisdiction inquiry, the court failed to squarely address the extent to which petitioners' activities in North Carolina were, in fact, continuous, substantial, and systematic—the touchstone of general jurisdiction. Instead, the court's sole legal conclusion regarding the minimum contacts requirement was that petitioners delivered products into the stream of commerce without limiting the

product in the distant past, well outside the time period for evaluating general jurisdiction.

extent to which those products could be sold in North Carolina.

Depositing a product into the stream of commerce, however, cannot by itself constitute the corporate "presence" necessary to sustain general jurisdiction. That principle is well illustrated by the facts of this case. As the lower court acknowledged, petitioners were not even "directly responsible for the presence in North Carolina of tires that they had manufactured." Pet. App. 22a-23a. But merely because they knew that their products *could* legally be sold in the United States and because they failed to affirmatively *prevent* their products from entering the forum state, petitioners were deemed to have engaged in the substantial, continuous and systematic activities within North Carolina necessary to support general jurisdiction there.

Those actions (and inactions) are a far cry from the contacts found sufficient for general jurisdiction in *Perkins*, where the company's president literally set up shop in the forum state. Indeed, petitioners' activities are considerably less substantial than those rejected as a basis for general jurisdiction in *Helicopteros*, where the defendant corporation sent personnel into the forum state, purchased equipment in the forum state, and engaged in business negotiations in the forum state. If those significant contacts were insufficient in *Helicopteros*, it is difficult to see how petitioners' activities in this case could be enough to allow general jurisdiction to be exercised.

This Court has squarely rejected the notion that a seller's "amenability to suit would travel with [its] chattel." *World-Wide Volkswagen*, 444 U.S. at 296.

But that is precisely the reasoning of the lower court, which based general jurisdiction on the fact that some products manufactured by petitioners were distributed into the state by third parties. Cf. *Burger King*, 471 U.S. at 475 (jurisdiction cannot be based on the "unilateral activity of another party or a third person" but may only result from "actions by the defendant *himself* that create a substantial connection to the forum State") (internal quotations omitted). The lower court reached that conclusion even though petitioners' ownership interest in the products themselves ceased when petitioners sold those products to third parties. It would be anomalous, to say the least, to hold that a corporation is "present" in a state, and thus amenable to general jurisdiction there, simply because a chattel that it no longer owns ultimately found its way there. Cf. *Shaffer* v. *Heitner*, 433 U.S. 186, 208-09 (1977) (presence of property in forum cannot serve as basis for *quasi in rem* jurisdiction where property is unrelated to the cause of action). In short, the mere fact that *products* manufactured by a defendant are present in a state cannot convert an absent defendant into a present one.

That conclusion holds, moreover, irrespective of the number of products that are ultimately delivered to the forum. The "substantial" contacts sufficient to justify general jurisdiction differ in kind as well as in number from those that can justify specific jurisdiction—they must be "sufficiently substantial *and of such a nature*" (*Perkins*, 342 U.S. at 447 (emphasis added)) as to support the exercise of global authority over litigation naming the defendant. And depositing an item into the stream of commerce is qualitatively different from the activities that satisfy

that exacting standard—establishing local offices, employees, business operations, and the like. Thus, regardless of the volume of products at issue, the stream of commerce theory cannot possibly serve as a valid basis for general jurisdiction.[5]

D. Any Effort By Respondents To Rely On The Forum Contacts Of Third Parties, Including Corporate Affiliates Of Petitioners, Should Be Rejected

Given the paucity of contacts between petitioners and North Carolina, it is perhaps not surprising that, as noted above, the trial court relied substantially on the perceived forum contacts not of the petitioners themselves but of their corporate affiliates, including their indirect parent company, Goodyear Tire and Rubber Company. See page 8 & n.2, *supra*. Although it purported to disavow reliance on the contacts of these third parties, the Court of Appeals was not entirely successful in that effort. See pages 9-10, *supra*. If respondents attempt in this Court to justify the exercise of jurisdiction based on imputing or

[5] The total number of tires manufactured by each of the three petitioners that found their way into North Carolina from 2004 to 2007, as well as the percentage of petitioners' total tire business represented by those numbers, was exceedingly small. The record showed that in the three-year period there were "at least" 6,402 tires made by Goodyear Luxembourg Tires, SA (out of a total manufacturing capacity of 7 million tires), 33,923 tires made by Goodyear Dunlop Tires France, SA (out of a capacity of 56.1 million tires), and 5,906 tires made by Goodyear Lastikleri T.A.S. (out of a capacity of 30.5 million tires). See Pet. App. 5a; Pet. 4-5 n.2. For Goodyear Lastikleri T.A.S., the Turkish company that manufactured the accident tire, this tiny trickle of tires into North Carolina each year represented only .000193 of its tire-manufacturing capacity.

attributing the forum contacts of corporate affiliates of petitioners (see Br. in Opp. 8, 10, 18), that argument should be rejected.

To begin with, the argument is squarely foreclosed by this Court's personal jurisdiction cases, which make clear that the requisite minimum contacts "must be met as to *each defendant* over whom a state court exercises jurisdiction." *Rush* v. *Savchuk*, 444 U.S. 320, 332 (1980) (emphasis added); see also *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13 (1984) ("[e]ach defendant's contacts with the forum State must be assessed *individually*") (emphasis added); *Calder*, 465 U.S. at 790 (same). Applying these principles, the Court in *Rush* rejected the argument that jurisdiction over an individual defendant in an automobile accident case could be based solely on the forum contacts of his insurance company, explaining that such a result was "plainly unconstitutional." 444 U.S. at 332. Similarly, in *Keeton*, the Court held that "jurisdiction over a parent corporation [does not] automatically establish jurisdiction over a wholly owned subsidiary." 465 U.S. at 781 n.13 (emphasis added). And in *Shaffer*, 433 U.S. at 213, the Court held that the presence of a corporation in Delaware did not justify jurisdiction over the corporation's officers and directors.

Nor is this all. In *Cannon Mfg. Co.* v. *Cudahy Packing Co.*, 267 U.S. 333, 337 (1925), the Court held that the maintenance of corporate formalities—so long as "not pure fiction"—precluded a finding of jurisdiction over a foreign parent corporation based on its subsidiary's forum contacts. The plaintiff in *Cannon* initially sued a Maine corporation in North Carolina state court for breach of contract. Plaintiff

served a wholly owned subsidiary of the Maine corporation, which had an office in North Carolina and, notably, was "the instrumentality employed to market [the parent's] products within the state." *Id.* at 335. Although the parent was a large national enterprise that "dominate[d]" the subsidiary "*immediately and completely*," this Court refused to disregard the "corporate separation" so "carefully maintained" through the keeping of separate books and the observance of all corporate formalities. *Id.* at 335-36. "The corporate separation," this Court reasoned, "though perhaps merely formal, was real. *It was not pure fiction.*" *Id.* at 337 (emphasis added). *Cannon* dooms any effort by respondents to rely on the forum contacts of petitioners' corporate affiliates.[6]

That result finds additional support in this Court's repeated recognition that "bedrock" principles of corporate law—including the stringent standards governing piercing of the corporate veil—are "deeply 'ingrained in our economic and legal systems.'" *United States* v. *Bestfoods*, 524 U.S. 51, 61-62 (1998) (quoting Douglas & Shanks, *Insulation from Liability Through Subsidiary Corporations*, 39 YALE L.J. 193, 193 (1929)). See also *Alpine View Co.* v. *Atlas Copco AB*, 205 F.3d 208, 218-19 (5th Cir. 2000) (applying veil-piercing principles in rejecting argument that

[6] The lower courts have applied *Cannon* to claims that a parent company could be haled into a distant forum in which is does not do business based on the forum activities of a subsidiary or other affiliated company. See, *e.g.*, *Consolidated Dev. Corp.* v. *Sherritt, Inc.*, 216 F.3d 1286, 1293-94 (11th Cir. 2000) (applying *Cannon* rule); *I.A.M. Nat'l Pension Fund* v. *Wakefield Indus., Inc.*, 699 F.2d 1254, 1258-59 (D.C. Cir. 1983) ("the relationship of parent and subsidiary alone would not suffice" for "service on the parent [to] reach a foreign subsidiary") (citing *Cannon*).

corporation's forum contacts should be attributed to separate, affiliated corporation). "A basic tenet of American corporate law is that the corporation and its shareholders are distinct entities." *Dole Foods Co.* v. *Patrickson*, 538 U.S. 468, 474 (2003). Certainly that principle was well established by the time this Court decided *International Shoe* in 1945. See, *e.g.*, *Berkey* v. *Third Ave. Ry. Co.*, 155 N.E. 58, 58 (N.Y. 1926) (Cardozo, J.) ("Stock ownership alone would be insufficient to charge the dominant company with liability for the torts of the subsidiary.").

In this case, of course, respondents never even *attempted* to demonstrate that petitioners' corporate affiliates, including their parent company, were anything other than entirely separate and independent corporations. The North Carolina Court of Appeals, moreover, specifically concluded that petitioners were "separate corporate entities" in relation to their corporate affiliates and that the evidence "show[ed] that other entities were responsible for the shipment of tires" into North Carolina. Pet. App. 22a. Under *Cannon* as well as traditional veil-piercing and "alter ego" doctrines, then, there is simply no basis for attributing to petitioners the forum contacts of any of their corporate affiliates.

II. THE EXACTING STANDARDS OF GENERAL JURISDICTION CREATE PREDICTABILITY AND AVOID ADVERSE CONSEQUENCES FOR SMALL BUSINESSES AND FOR AMERICAN COMPANIES THAT SERVE FOREIGN MARKETS

A. Relaxation Of The General Jurisdiction Standards To Embrace A Stream Of Commerce Theory Would Undermine The Predictability Required By Due Process

Due process prohibits a court from exercising personal jurisdiction over a defendant unless the "defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen*, 444 U.S. at 297. That proscription "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Ibid.*

This "fair warning" requirement can be satisfied by a minimal quantum of contacts in the specific jurisdiction context. That is because when a defendant purposefully delivers products to a state, it may reasonably expect to be subject to suit there based on injuries *those* products caused in the forum, assuming other requirements are satisfied. It can therefore take steps to "alleviate the risk of burdensome litigation" in the forum—for example, by purchasing insurance or passing costs on to forum consumers—and it is not unfair that it should have to do so. *Ibid.*

Reasonable forseeability in the general jurisdiction context, however, requires more. A defendant does not reasonably expect to be subject to state jurisdiction for activities unrelated to its contacts with the forum if it lacks a substantial presence there. In addition, placing a product into the stream of commerce with the knowledge that the product *could* ultimately end up in a state cannot reasonably put a manufacturer on notice that it may be sued in that state based on unrelated actions occurring halfway around the world.

By conflating specific and general jurisdiction, the lower court's rule precludes defendants from structuring their conduct with any minimal assurance as to where their conduct will and will not render them liable to suit. Under the decision below, there is nothing a potential defendant can do to minimize the risk of litigation in the forum; designing safer products, issuing clear warnings, or purchasing product liability insurance in North Carolina would have absolutely no bearing on the likelihood or costs of litigation concerning a labor dispute in China or a contract negotiation in Spain. Needless to say, the uncertainty and unpredictability caused by the North Carolina courts' approach will only be multiplied if the decision below is upheld, since the majority of states have long-arm statutes that extend as far as due process permits. See McFarland, *Dictum Run Wild: How Long-Arm Statutes Extended the Limits of Due Process*, 84 B.U. L. REV. 491, 525-30 (2004) (30 of 50 states).[7]

[7] Moreover, upholding general jurisdiction is unlikely to serve any conceivable interest of the forum state in such situations

B. Affirming The Judgment Below Would Harm Small Companies And All U.S. Companies That Serve Foreign Markets

Clear rules are a virtue in most areas of the law. They are especially important with respect to personal jurisdiction—a threshold question in many lawsuits that has "become one of the most litigated issues in state and federal courts." Weintraub, *A Map Out of the Personal Jurisdiction Labyrinth*, 28 U.C. DAVIS L. REV. 531, 531 & n.5 (1995) (more than 2,300 cases involving "minimum contacts" test in 1990-95). Against this backdrop, the distinction between general and specific jurisdiction stands out as one of the few fixed points of reference. Any blurring of that distinction would severely undermine the goals of predictability and fairness that the minimum contacts test was designed to promote—and which due process demands. The resulting uncertainty would negatively impact not just large multinational corporations, but also small companies—both foreign and domestic—which, in today's global economy, are increasingly likely to see their products wind up in places far removed from their corporate homes.

Any loosening of general jurisdiction's strict requirements is also likely to affect U.S. foreign relations and international trade—with negative consequences for U.S. companies. See *Asahi*, 480 U.S. at 115 (instructing courts to consider the "Federal interest in Government's foreign relations policies"). The international community has long lamented what it has regarded as lax U.S. rules

where the litigation is unrelated to the defendant's forum activities.

regarding personal jurisdiction. See Twitchell, *Why We Keep Doing Business with Doing-Business Jurisdiction*, 2001 U. CHI. LEGAL F. 171, 173 (2001). If those rules are diluted further by an eradication of the bedrock distinction between specific and general jurisdiction, it is likely that other countries will retaliate by making it much easier for U.S. companies to be haled into foreign courts to answer for claims completely unrelated to activities in those countries. See Born, *Reflections on Judicial Jurisdiction in International Cases*, 17 GA. J. INT'L & COMP. L. 1, 29 (1987) ("Because exorbitant assertions of judicial jurisdiction by United States courts may offend foreign sovereigns, these claims can provoke diplomatic protests, trigger commercial or judicial retaliation, and threaten friendly relations in unrelated fields.").

Indeed, many nations have enacted reciprocity measures specifically authorizing their courts to exercise jurisdiction over a foreign defendant if that defendant's home country would assert jurisdiction in the same situation. *Id.* at 15. The specter of such "retaliatory statutes"—and the possibility that more are in store if the general jurisdiction standard is weakened—is one more reason to heed this Court's admonition that "[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field." *Asahi*, 480 U.S. at 115 (internal quotations omitted).[8] Caution

[8] Notably, the very same concern with foreign retaliation is reflected in this Court's cases involving the extraterritorial application of U.S. laws. See, *e.g.*, *McCulloch* v. *Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 21 (1963) (noting that expansive application of U.S. law in foreign contexts could "invite retaliatory action from other nations").

is also warranted to avoid the negative economic ramifications that naturally flow from the North Carolina courts' approach to general jurisdiction. Faced with such an uncertain jurisdictional regime in the United States and reciprocal aggressive treatment abroad by foreign courts, some small product manufacturers would no doubt elect simply to withdraw from manufacturing altogether or attempt to stop serving markets where they simply cannot tolerate being subjected to general jurisdiction, with negative ramifications for commerce and the U.S. economy.

In our federal system it is axiomatic that a "state's jurisdictional power remains territorial." *Lesnick*, 35 F.3d at 943. By severing the connection between general jurisdiction and corporate "presence," the North Carolina Court of Appeals effectuated an astonishing extraterritorial expansion of the state's jurisdictional power. If permitted to stand, the lower court's decision will usher in a new world without borders, where every state's courts could effectively assert universal jurisdiction over absent defendants whose products are swept into the forum by the sometimes haphazard and unpredictable currents of the stream of commerce. The resulting prejudice would be especially great for companies, such as PLAC's members, that manufacture products and place them into the stream of commerce. This Court has never authorized such an extraordinary

Those concerns are implicit in the longstanding presumption against extraterritorial application of U.S. laws—a presumption recently reaffirmed and indeed strengthened by this Court. See *Morrison* v. *National Australia Bank Ltd.*, 130 S. Ct. 2869 (2010).

expansion of general jurisdiction. It should not do so here.[9]

CONCLUSION

For the foregoing reasons, the judgment of the North Carolina Court of Appeals should be reversed.

Respectfully submitted.

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[9] The Court of Appeals was also wrong (Pet. App. 26a) to rely on the burdens on respondents that supposedly would arise from having to sue in France. The burdens imposed on a *plaintiff* are germane to the separate question whether the exercise of personal jurisdiction comports with "fair play and substantial justice," not to the antecedent determination whether the *defendant* has minimum contacts with the forum state. See *Burger King*, 471 U.S. at 477.

APPENDIX

PRODUCT LIABILITY
ADVISORY COUNCIL, INC.
LIST OF CORPORATE MEMBERS

3M
Altec Industries
Altria Client Services Inc.
Anheuser-Busch Companies
Arai Helmet, Ltd.
Astec Industries
Bayer Corporation
Beretta U.S.A Corp.
BIC Corporation
Biro Manufacturing Company, Inc.
BMW of North America, LLC
Boeing Company
Bombardier Recreational Products
BP America Inc.
Bridgestone Americas Holding, Inc.
Brown-Forman Corporation
Caterpillar Inc.
Chrysler LLC
Continental Tire the Americas LLC
Cooper Tire and Rubber Company
Crown Equipment Corporation
Daimler Trucks North America LLC
The Dow Chemical Company
E.I. duPont de Nemours and Company
Eli Lilly and Company
Emerson Electric Co.
Engineered Controls International, Inc.
Environmental Solutions Group
Estee Lauder Companies
Exxon Mobil Corporation

Ford Motor Company
General Electric Company
General Motors Corporation
GlaxoSmithKline
The Goodyear Tire & Rubber Company
Great Dane Limited Partnership
Harley-Davidson Motor Company
Hawker Beechcraft Corporation
Honda North America, Inc.
Hyundai Motor America
Illinois Tool Works, Inc.
International Truck and Engine Corporation
Isuzu Motors America, Inc.
Jaguar Land Rover North America, LLC
Jarden Corporation
Johnson & Johnson
Johnson Controls, Inc.
Joy Global Inc., Joy Mining Machinery
Kawasaki Motors Corp., U.S.A.
Kia Motors America, Inc.
Kolcraft Enterprises, Inc.
Kraft Foods North America, Inc.
Leviton Manufacturing Co., Inc.
Lincoln Electric Company
Magna International Inc.
Marucci Sports, L.L.C.
Mazak Corporation
Mazda (North America), Inc.
Medtronic, Inc.
Merck & Co., Inc.
Michelin North America, Inc.
Microsoft Corporation
Mitsubishi Motors North America, Inc.
Mueller Water Products
Niro Inc.

Nissan North America, Inc.
Novartis Pharmaceuticals Corporation
PACCAR Inc.
Panasonic
Pella Corporation
Pfizer Inc.
Porsche Cars North America, Inc.
Purdue Pharma L.P.
Remington Arms Company, Inc.
RJ Reynolds Tobacco Company
Schindler Elevator Corporation
SCM Group USA Inc.
Segway Inc.
Shell Oil Company
The Sherwin-Williams Company
Smith & Nephew, Inc.
St. Jude Medical, Inc.
Stanley Black & Decker, Inc.
Subaru of America, Inc.
Synthes (U.S.A.)
Techtronic Industries North America, Inc.
Terex Corporation
TK Holdings Inc.
The Toro Company
Toshiba America Incorporated
Toyota Motor Sales, USA, Inc.
Vermeer Manufacturing Company
The Viking Corporation
Volkswagen of America, Inc.
Volvo Cars of North America, Inc.
Vulcan Materials Company
Whirlpool Corporation
Yamaha Motor Corporation, U.S.A.
Yokohama Tire Corporation
Zimmer, Inc.

AMICUS CURIAE BRIEF

Supreme Court, U.S.
FILED
NOV 19 2010
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No. 10-76

IN THE

Supreme Court of the United States

GOODYEAR LUXEMBOURG TIRES SA, ET AL.,

Petitioners,

v.

EDGAR D. BROWN, ET UX., CO-ADMINISTRATORS OF THE ESTATE OF JULIAN DAVID BROWN, ET AL.,

Respondents.

On Writ of Certiorari to the North Carolina Court of Appeals

BRIEF OF WASHINGTON LEGAL FOUNDATION AND ALLIED EDUCATIONAL FOUNDATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether a foreign corporation is subject to general in personam jurisdiction in a cause of action neither arising out of nor related to any contacts between that corporation and the forum state, merely because the corporation places into the stream of commerce products that are then distributed by third parties to the forum state.

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INTERESTS OF *AMICI CURIAE*

The Washington Legal Foundation (WLF) is a non-profit, public interest law and policy center with supporters in all 50 states.[1] WLF devotes a substantial portion of its resources to defending and promoting free enterprise, individual rights, and a limited and accountable government. WLF regularly publishes monographs and other publications on these and related

[1] Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part; and that no entity, other than *amici* and their counsel, made a monetary contribution intended to fund the preparation and submission of this brief. All parties have consented to the filing of this brief; letters of consent have been lodged with the clerk.

topics. In addition, WLF has regularly appeared before this and numerous other federal and state courts to urge adherence to traditional restraints on the judiciary's exercise of personal jurisdiction. *See, e.g., Mother Doe v. Hamdan*, No. 07-293-KSF, 2008 U.S. Dist. Lexis 93758 (E.D. Ky. Nov. 18, 2008); *Mother Doe v. Sheikh Mohammed*, 632 F. Supp. 2d 1130 (S.D. Fla. 2007).

The Allied Educational Foundation (AEF) is a non-profit, charitable and educational foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study and has appeared as *amicus curiae* in this Court on a number of occasions.

Amici agree with Petitioners that the State appeals court's holding below–that a foreign manufacturer's mere introduction of its products into the stream of commerce, standing alone, can support a downstream State's assertion of general jurisdiction over that manufacturer–is wholly unsupported by this Court's jurisprudence. *Amici* also fear that the decision below, if allowed to stand, threatens to undermine the important federal interest in fostering improved foreign commerce and international relations.

Amici have no direct interest, financial or otherwise, in the outcome of this case. *Amici* submit this brief solely to further the public interest in safeguarding this Court's longstanding limitations on the exercise of personal jurisdiction by U.S. courts over foreign corporations. All parties have consented to the filing of this brief, and letters of consent have been lodged in the Court's docket.

STATEMENT OF THE CASE

This case raises important issues about the continued viability of this Court's longstanding limitations on the exercise of personal jurisdiction by U.S. courts over foreign corporations following the holding below–that a foreign manufacturer's mere introduction of its products into the stream of commerce, standing alone, can support a downstream State's assertion of general jurisdiction over that manufacturer.

In April 2004, two North Carolina residents were killed in a bus accident just outside Paris, France. *See* Pet. App. 2a. On behalf of the decedents' estates, Respondents brought a products liability action in North Carolina state court against multiple European defendants, including Petitioners Goodyear Luxembourg Tires SA, Goodyear Lastikleri T.A.S., and Goodyear Dunlop Tires France SA, and their corporate affiliate, The Goodyear Tire & Rubber Company. *Id.* The complaint sought money damages arising from the "design, construction, testing, and inspection" of an allegedly defective tire. *Id.*

Petitioners are tire manufacturers operating in Luxembourg, Turkey, and France, respectively. *Id.* at 22a. They have no physical or business presence in North Carolina and took no affirmative action to cause their tires to be marketed, distributed, or sold in North Carolina. *Id.* Instead, other, separate entities were solely responsible for the introduction of Petitioners' tires into the United States, including North Carolina. *Id.* at 22a-23a. Of the more than 90 million tires manufactured by Petitioners from 2004 to 2007, only 45,000, or .05 percent, were distributed by separate

entities in North Carolina. *Id.* at 26a. The particular tire at issue in the bus accident was never distributed in North Carolina, and "the present dispute is not related to, nor did it arise from, [Petitioners'] contacts with North Carolina." *Id.* at 12a.

Petitioners moved to dismiss the complaint for lack of personal jurisdiction, arguing that their lack of contacts with North Carolina precluded the court from exercising jurisdiction over them consistent with the Due Process Clause. *Id.* at 3a. In support of their motion, Petitioners submitted evidence to establish that the allegedly defective tire was manufactured in Turkey, sold and used entirely in France, and involved in an accident in France. *Id.*

The trial court denied the motion. Emphasizing that *other* tires manufactured by Petitioners were ultimately distributed in North Carolina, the court held that Petitioners "knew or should have known that some of th[eir] tires were distributed for sale to North Carolina residents." *Id.* at 33a. Because "North Carolina has a substantial interest in allowing its citizens a forum for the redress of grievances," the court found that Petitioners "have continuous and systematic contacts with North Carolina and are conducting substantial activity within North Carolina" such that they "could reasonably anticipate being haled into court in North Carolina" for any claim arising anywhere in the world. *Id.* at 34a-35a.

The North Carolina Court of Appeals affirmed. Because the plaintiffs' claims were neither related to nor arose from Petitioners' contacts with North Carolina, the court agreed that "this case involves general rather than

specific jurisdiction." *Id.* at 12a-13a. But despite acknowledging that Petitioners took no affirmative action to cause their tires to be distributed in North Carolina (and that other entities were solely responsible for doing so), the appeals court upheld the trial court's exercise of personal jurisdiction over Petitioners. *Id.* at 22a.

The dispositive question for the appeals court was "whether [Petitioners] have purposefully injected their products into the stream of commerce without any indication that they desired to limit the area of distribution of their product so as to exclude North Carolina." *Id.* at 20a. Concluding that Petitioners "knew or should have known that a Goodyear affiliate obtained tires manufactured by [Petitioners] and sold them in the United States in the regular course of business," the appeals court agreed with the trial court that Petitioners are subject to suit in North Carolina for all claims, regardless of where they arise. *Id.* at 28a. In doing so, the court rejected Petitioners' argument that such a "stream of commerce" analysis is simply inapposite in a general jurisdiction case. *Id.* Failing to address the federal authority cited by Petitioners, the appeals court noted only that Petitioners "have not cited a North Carolina case" rejecting placement of products in the stream of commerce as a basis for general jurisdiction. *Id.*

Relying on authority from three federal circuits that the mere placement of goods into the stream of commerce cannot support an exercise of general jurisdiction, Petitioners sought review from the North Carolina Supreme Court; that request was denied without opinion.

SUMMARY OF THE ARGUMENT

This Court has long recognized that among the freedoms protected by the Due Process Clause is the freedom not to be haled into court indiscriminately. This case involves a single tire manufactured in Turkey and involved in an auto accident in France. None of the events giving rise to this suit occurred in the United States, and none of the Petitioners–three tire manufacturers operating in Luxembourg, Turkey, and France–are citizens or even residents of the United States. Petitioners took no affirmative action to cause their tires to be distributed in North Carolina, and the type of tire involved in the accident is not even distributed in North Carolina. Yet, despite the absence of any meaningful connection between Petitioners and the forum State, Respondents seek to hale each of them into a North Carolina court.

The court below concluded that jurisdiction was proper in this case because Petitioners "knew or should have known that a Goodyear affiliate obtained tires manufactured by [Petitioners] and sold them in the United States in the regular course of business." Pet. App. at 28a. But such foreseeability, standing alone, has *never* been the legal threshold for satisfying personal jurisdiction under this Court's jurisprudence. Instead, this Court has inquired whether the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. This inquiry is satisfied when the defendant "purposefully avails" itself of the privilege of conducting activities in the forum state. No such showing was made here.

In the trial court below, Petitioners submitted evidence establishing their lack of any relevant contacts with the State of North Carolina. For their part, Respondents never refuted this evidence. Indeed, the only nexus between Petitioners and North Carolina results from the fact that residents of North Carolina traveled to Europe, where they were involved in an accident allegedly caused, in part, by one of Petitioners' tires. But these contacts are completely irrelevant for purposes of general jurisdiction, since the unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.

At a bare minimum, the mere distribution of Petitioners' products by other entities into North Carolina via the stream of commerce offers no basis for that State to assert general jurisdiction over claims wholly unrelated to Petitioners' contacts there. And absent some connection between the in-state sale of the product at issue and an in-state injury resulting from its use (i.e., *specific* jurisdiction), a Petitioners' mere introduction of a product into the stream of commerce offers North Carolina no legitimate interest in adjudicating all claims anywhere against Petitioners.

Furthermore, one of the functions of this Court's personal jurisdiction jurisprudence is to protect against expansive assertions of state authority. If allowed to stand, the decision below will ensure that businesses who sell products internationally will be unable to predict where they may properly be subject to suit, despite this Court's admonition that the American legal system should afford "a degree of predictability." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

The unduly expansive exercise of general jurisdiction by American courts is already sufficiently offensive from the perspective of many foreign legal systems that it has had a significant adverse impact on foreign trade relations. And once U.S. state courts begin to assert general jurisdiction over foreign companies lacking any connection to the United States, those countries where such companies are based will likely do the same to American businesses. It is difficult to overestimate the deterrent effect on international commerce that will result from allowing a State to leverage a foreign company's relatively small stream of sales by other entities into general jurisdiction over a company's global conduct.

ARGUMENT

I. THIS COURT'S JURISPRUDENCE PROVIDES NO BASIS FOR NORTH CAROLINA'S EXERCISE OF GENERAL JURISDICTION OVER PETITIONERS

Among the freedoms protected by the Due Process Clause is the freedom not to be haled into court indiscriminately. This case hinges on a single tire manufactured in Turkey and involved in an auto accident in France. None of the events giving rise to this suit occurred in the United States, and none of the Petitioners, who were defendants below, are citizens or even residents of the United States. Petitioners took no affirmative action to cause their tires to be distributed in North Carolina, and the type of tire involved in the accident is not even distributed in North Carolina. Yet, despite the absence of any relevant connection between these foreign entities and the forum State, Respondents

seek to hale three tire manufacturers operating in Luxembourg, Turkey, and France into a North Carolina court.

The North Carolina Court of Appeals concluded that jurisdiction was proper in this case because Petitioners "knew or should have known that a Goodyear affiliate obtained tires manufactured by [Petitioners] and sold them in the United States in the regular course of business." Pet. App. at 28a. But such foreseeability, standing alone, has never been the legal threshold for satisfying personal jurisdiction under this Court's jurisprudence. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) ("[F]oreseeability is not a 'sufficient benchmark' for exercising personal jurisdiction.").

Rather, "the foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). This inquiry is satisfied when the defendant "purposefully avails itself of the privilege of conducting activities" in the forum state. *Burger King Corp.*, 471 U.S. at 475. Only when a foreign corporation "purposely avails" itself of the privilege of conducting activities within the forum state, does "it ha[ve] clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to consumers, or, if the risks are too great, severing its connection with the State." *World-Wide Volkswagen Corp.*, 444 U.S. at 297.

General jurisdiction–which gives the forum State blanket jurisdiction over *all* of a defendant's conduct no matter where it occurs–attaches only when there are "continuous and systematic general business contacts" between the nonresident corporation and the forum state. *Helicopteros Nacionales de Columbia v. Hall*, 466 U.S. 408, 412 (1984). Because general jurisdiction must be justified solely by the defendant's substantial contacts with the forum state, "general jurisdiction is a demanding standard that is considerably more stringent" than that employed for specific jurisdiction. *Santora v. Starwood Hotel & Resorts Worldwide, Inc.*, 580 F. Supp. 2d 694, 698 (N.D. Ill. 2008); *see Metro. Life Ins. Co.*, 84 F.3d 560 at 568 ("The standards are more stringent for general jurisdiction."); *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1169 (9th Cir. 2006) ("The standard for general jurisdiction is high; contacts with a state must approximate physical presence.") (citation omitted); *Meier v. Sun Int'l Hotels*, 288 F.3d 1264, 1274 (11th Cir. 2002) ("A foreign corporation's contacts with the forum that are unrelated to the litigation must be substantial in order to warrant the exercise of general personal jurisdiction.").

In the trial court below, Petitioners submitted evidence establishing their lack of any relevant contacts with the State of North Carolina. Among the facts established by that evidence are that Petitioners (1) lack any physical presence in the state of North Carolina; (2) have never had a place of business, mailing address, or phone number in the state; (3) have never manufactured, designed, or sold products in North Carolina or shipped their products into the state; (4) have never paid taxes in North Carolina, maintained bank accounts there, held board meetings there, or negotiated contracts there; (5)

have never employed sales representatives or any other kind of employees in the state; (6) have never advertised or solicited business in North Carolina; and (7) have never appointed registered agents in North Carolina or even used its court system. *See* JA 155-57, 165-67, 184-86. For their part, Respondents never refuted this evidence.

Indeed, the only connection in this lawsuit between Petitioners and North Carolina results from the fact that residents of North Carolina traveled to Europe, where they were involved in an accident allegedly caused in part by one of Petitioners' tires. But these contacts are completely irrelevant for purposes of general jurisdiction, since the "unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *Hanson v. Denckla*, 357 U.S. 235, 254 (1958). Instead, the "minimum contacts must come about *by an action of the defendant purposefully directed toward the forum state.*" *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 112 (1984) (citation omitted) (emphasis in original).

At a bare minimum, the mere distribution of Petitioners' products, by other entities, into North Carolina via the stream of commerce offers no basis for that State to assert general jurisdiction over claims wholly unrelated to Petitioners' contacts there. Most relevant here, "[t]he placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum state" so as to give rise to jurisdiction. *Asahi*, 480 U.S. at 110. Rather, this Court requires both that the defendant "regularly *sold*" the product at issue in the forum state,

id. at 121 (Brennan, J., concurring in judgment), and that the product caused injury in the forum state, *World-Wide Volkswagen*, 444 U.S. at 297. Neither requirement is satisfied here.

The only category of case that can possibly satisfy these requirements is one that "arise[s] out of or relate[s] to" the defendant's contacts with the state, *i.e.*, a specific-jurisdiction case. *Helicopteros*, 466 U.S. at 44. But Respondents have already conceded that Petitioners' "contacts [did] not directly relate to the event giving rise to the cause of action" and that they were only "alleg[ing] that general jurisdiction" existed. JA 472. The North Carolina Court of Appeals agreed, concluding that "[t]he present dispute is not related to, nor did it arise from, [Petitioners'] contacts with North Carolina," and that Respondents must satisfy the requirements for general jurisdiction. Pet. App. at 12a-131.

Absent some such connection between the in-state sale of the product at issue and an in-state injury from its use, a foreign corporation's mere introduction of a product into the stream of commerce provides a forum State with no legitimate interest in adjudicating all claims against that corporation "in *any* litigation arising out of *any* transaction or occurrence taking place *anywhere* in the world." *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 787 (7th Cir. 2003) (emphasis in original). Simply put, North Carolina has no valid basis for exercising global jurisdiction over Petitioners.

II. THE DECISION BELOW THREATENS TO UNDERMINE THE FEDERAL INTEREST IN FOSTERING FOREIGN COMMERCE AND INTERNATIONAL RELATIONS

One of the functions of this Court's personal jurisdiction jurisprudence is to protect against expansive assertions of state authority by "ensur[ing] that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen*, 444 U.S. at 292. In considering the "procedural and substantive policies of other nations whose interests are affected by the assertion of jurisdiction," this Court has called for courts "to consider the procedural and substantive policies of other nations," and the "Federal interest in [the] Government's foreign relations policies." *Asahi*, 480 U.S. at 115. Such considerations, properly weighed, commend "an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State." *Id.*

Among other things, allowing general jurisdiction over foreign companies for claims unrelated to their contacts with the United States raises complex choice of law issues, which are often expensive to litigate and difficult to resolve. For their part, Respondents have never shown that they cannot seek suitable relief in a European forum more closely connected to their injury. Under such circumstances, it makes no sense for a North Carolina court–from its vantage point half-way around the world–to address matters fully capable of being addressed by a foreign tribunal.

The North Carolina appeals court's expansive view of general jurisdiction not only stands athwart this Court's own jurisprudence, but is also contrary to the jurisdictional practice in the rest of the world. In the European Union, for example, general jurisdiction over a corporation is strictly limited to where the entity has its "statutory seat," "central administration" or "principal place of business." *See* Kevin M. Clermont & John R.B. Palmer, *Exorbitant Jurisdiction*, 58 Me. L. Rev. 474, 477 (2006). If it has a "branch" or "agency," it may be sued there only "as regards a dispute arising out of the operations" of that branch or agency. *Id.; see also* Jens Dammann, *Adjudicative Jurisdiction and the Market for Corporate Charters*, 82 Tulane L. Rev. 1869, 1873 (2003) (noting that European firms may be sued for any cause of action only in their domicile or "general forum").

It is difficult to overestimate the deterrent effect on commerce that will result from allowing a State to leverage a foreign company's relatively small stream of sales by other entities into general jurisdiction over a company's global conduct. This issue is substantial because of the critical importance of foreign trade to our national economy. "'Great care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.'" *Asahi*, 480 U.S. at 115 (quoting *United States v. First Nat'l Bank*, 379 U.S. 378, 404 (1965) (Harlan, J., dissenting)). Such care and reserve, as embodied by this Court's personal jurisdiction jurisprudence, provides the international business community with an important degree of predictability that allows its members to "structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable

to suit." *World-Wide Volkswagen*, 444 U.S. at 297. But permitting North Carolina to exercise general jurisdiction over Petitioners under the facts of this case will drastically undermine that predictability.

Such jurisdictional uncertainty has the potential to interfere with the federal government's ability to foster improved foreign relations and international trade. Congress, in conjunction with the Executive Branch, has consistently sought to increase America's standing in world markets. These important efforts will be severely undercut if the decision below is allowed to stand. For these reasons, this Court has long emphasized that United States "foreign relations policies, will be best served by . . . an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State." *Asahi*, 480 U.S. at 115; *Michelin Tire Corp. v. Wages*, 423 U.S. 276, 285 (1976) (recognizing that the United States "must speak with one voice when regulating commercial relations with foreign governments"). Indeed, many nations have already "objected to the extraterritorial jurisdiction asserted by courts in the United States" so as to prevent the U.S. Department of State from securing international agreements on the reciprocal recognition of judgments. *See* U.S. Dep't of State, "Enforcement of Judgments," available at http://travel.state.gov/law.judicial/judicial_691.html (last visited Nov. 12, 2010).

Broad assertions of general jurisdiction over foreign companies by United States courts also risk retaliation against American companies abroad. A foreign firm that increasingly finds itself subject to suit in an American state court on any unrelated cause of

action merely because its products are introduced into the stream of commerce may well find it more beneficial to strictly limit its commercial dealings to other countries. And once U.S. state courts begin to assert general jurisdiction over foreign companies lacking any connection to the United States, those countries where such companies are based will likely do the same to American businesses. This undoubtedly will negatively impact foreign trade by deterring foreign firms from doing business with the United States. *See Helicopteros*, 466 U.S. at 425 n.3 (Brennan, J., dissenting) (noting the Solicitor General's concern that an expansive interpretation of personal jurisdiction "will cause foreign companies to refrain from purchasing in the United States for fear of exposure to general jurisdiction on unrelated causes of action").

CONCLUSION

Amici curiae request that the Court reverse the judgment below.

Respectfully submitted,

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